

Lala Data Ram Gupta

Vs

Hari Krishan and Others

Civil Appeal No. 432 of 1970

(D.A. Desai, A.D. Koshal, R.B. Misra JJ)

31.03.1981

JUDGMENT

DESAI, J. -

1. Respondent-landlords, filed Suit 56 of 1963 against the appellant-tenant for recovering possession of the building more particularly described at the foot of the plaint. The suit was contested by the appellant on diverse grounds. The trial Court held that the suit would be governed by the U.P. (Temporary) Control of Rent and Eviction Act, 1947 ('1947 Act' for short), and the appellant-defendant was not liable to be evicted. In accordance with this finding the suit filed by the respondents was dismissed with costs.

2. Respondents preferred First Appeal 172 of 1964 to the High Court of Judicature at Allahabad. A Division Bench of the High Court held that the lease was a lease of the land that is open site only and that once the original lease determined by efflux of time the appellant-tenant had to vacate and hand over possession of the land to the lessor or his successors along with the new construction without any right to claim compensation therefor. In reaching this conclusion the High Court was of the opinion that the 1947 Act extended protection to a tenant of an 'accommodation' from ejection and the definition of the expression 'accommodation' does not include an open site only. The High Court also fixed Rs. 300 p.m. as damages for use and occupation from March 11, 1963, till possession was restored to the plaintiffs-respondents. In accordance with this finding the High Court allowed the appeal, set aside the judgment and decree of the trial Court, and decreed the suit for eviction directing the appellant to pay mesne profits as herein indicated. Appellant filed this appeal by certificate granted by the High Court under Article 133(1)(a) of the Constitution as it stood in 1969.

3. At the hearing of this appeal Dr. Chitale urged that during the pendency of this appeal, appellant filed Civil Miscellaneous Petition 7986 of 1976 requesting this Court to take notice of the introduction of Section 29-A by U.P. Act 28 of 1976 in the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 ('1972 Act' for short), which had repealed and replaced the 1947 Act. Section 29-A extended protection against eviction to tenants of open sites or lessees of open land. As pointed out earlier, 1947 Act did not apply to the open land and this conclusion was reached by the courts in view of the definition of the expression 'accommodation' in 1947 Act. Thus, the lessees of open land even in areas where the relevant Rent Act of U.P. was in force, were denied any protection. The legislature took note of this omission and by U.P. Act 28 of 1976, introduced Section 29-A in 1972 Act so as to extend the protection against eviction to tenants of open sites on which tenants have put up construction. The word 'building' in Section 3 of the 1972 Act was substituted by the word 'land'. (Ed. : Sub-section (1) of Section 29 in this regard provides : "For the

purposes of this section, the expression 'tenant' and 'landlord' shall have the meanings respectively assigned to them in clauses (a) and (j) of Section 3 with the substitution of the word 'land' for the word 'building'"). Sub-section(2) of Section 29-A provides that Section 29-A would apply only to land let out, either before or after the commencement of the section, where the tenant, with the landlord's consent has erected any permanent structure and incurred expenses in execution thereof. In order to avail of the protection, sub-section (6)(a) provides that in any suit or appeal or other proceeding pending immediately before the commencement of the section no decree for eviction of a tenant from any land to which the section applies shall be passed or executed except on one or more of the grounds mentioned in sub-section (2) of Section 20. There is a proviso to this sub-section (Ed. : In clause (a) of sub-section (6).). The proviso being material, may be reproduced :

Provided the tenant within a period of three months from the commencement of this section by an application to the court, unconditionally offers to pay to the landlord the enhanced rent of the land for the entire period in suit and onwards at the rate of 10% per annum of the prevailing market value of the land together with costs of the suit (including the costs of any appeal or of any execution or other proceedings).

Sub-section (6)(b) provides that enhanced rent shall be determined by the court seized of the case at any stage of the proceeding. Sub-section (6)(c) provides that on payment of enhanced rent with costs, the suit for eviction has to be dismissed. Sub-section (6)(d) provides that in the event of default on the part of the tenant to pay the enhanced rent and costs, the court should proceed further in the case as if Section 29-A were not in force. Sub-section (7) gives an overriding effect to the provisions of Section 29-A by providing that the provisions of the section shall have effect notwithstanding anything contrary contained in any contract or instrument or in any law for the time being in force. There is an explanation which is not material.

4. Reverting to the facts of this case the High Court in terms held that the lease was the lease of open site conferring a right on the tenant to put up construction at his own costs. This becomes clear from the following pertinent observation :

From all that has been said above it will follow that in the instant case the real nature of the transaction and the intention of the parties was that in reality a lease of the site for the purposes of making constructions at his own expense was taken by and given to Lala Data Ram (appellant) and that he throughout the stipulated period remained a lessee of the site and the owner of the new constructions made by him thereon.

Indisputably, on this finding Section 29-A would be attracted because sub-section (2) in terms extends protection to tenant of open site on which tenant has put up construction at his cost with the landlord's consent.

5. In order to avail of the benefit of Section 29-A, Civil Miscellaneous Petition 7986 of 1976 was given within the prescribed period by the appellant. Once such an application is given, the obligation is on this Court first to determine the enhanced rent according to the formula statutorily prescribed being 10% per annum of the prevailing market value of the leased land. Such rent when determined shall be payable by the tenant for the entire period in the suit. Once the tenant has made and application, this Court has to determine the enhanced rent, and on such determination the tenant should pay the same along with costs. If he fulfils these pre-conditions, he is entitled to the benefit of the protection extended by Section 29-A which would imply that the suit for eviction will have to be dismissed.

6. We have heard Dr. Chitale for the appellant and Shri G.L. Sanghi for the respondents on the implication of the application of Section 29-A. Dr. Chitale for the appellant-tenant unconditionally conceded to pay the rent to be determined by us as per the formula prescribed in Section 29-A. It appears that as a condition of stay, the tenant has been paying Rs. 300 p.m. by way of damages for the use and occupation of the building. In order to avail of the full benefit extended by the Act, the enhanced rent to be determined by us will have to be paid by the appellant-tenant from the date of institution of the suit and for the entire period during which the suit, including the appeal, is pending which means till the disposal of the appeal by us.

7. Shri Sanghi, however, said that the respondent-landlord is in straitened financial circumstances and that he needs to be rehabilitated in business and even if the appellant who has a flourishing business can avail of the protection of the 1972 Act in view of the provision introduced by Section 29-A, the court may sympathetically consider the position of respondent-landlord.

8. Having given our anxious thought to the rival contentions and in view of the fact that the appellant-tenant is entitled to the protection of the 1972 Act as amended by the 1976 Act, we are of the opinion that with a view to doing justice between the parties keeping in view the overall position of law and the equities of the case, the following order would meet the ends of justice :

(i) Appellant-tenant shall surrender and handover peaceful and vacant possession of the shop No. 81 marked CBLZ and shaded with oblique lines in the map to be annexed to the decree pursuant to this judgment within one month from today to respondent 1 provided that respondent 1 (landlord) shall set up his own business and use the shop for carrying on his own business failing which he would be liable to return possession of the shop to the appellant-tenant;

(ii) In view of respondent 1 (landlord) getting possession of a shop in recognised business locality, some consideration has been shown in determining the rent and accordingly with the consent of the parties Rs. 400 p.m. is determined as rent as per the formula prescribed in Section 29-A and the same shall be payable by the appellant to the respondent-landlords effective from April 1, 1972. Appellant says that he has deposited, tendered or paid Rs. 300 p.m. as and by way of damages for use and occupation. Therefore, after giving credit for the amount so paid, tendered or deposited, the balance at the rate of Rs. 100 p.m. be paid by the appellant to the respondents within two months from today, for the period subsequent to March 31, 1972;

(iii) The appellant shall continue to pay in future rent at the rate of Rs. 400 p.m. to the respondents;

(iv) Respondents-landlords would not be entitled to evict the appellant-tenant for a period of ten years from the premises remaining in his possession after surrendering possession of the shop mentioned at (i) above on any ground except default in payment of rent for a period of six months;

(v) Respondents are at liberty to seek enhancement of rent if any future amendment to the law enables them to do so.

9. Parties agree that there shall be no order as to costs throughout Appeal allowed in terms

hereinabove indicated.

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