

Atma Ram Mittal

Vs

Ishwar Singh Punia

Civil Appeal No. 3001 of 1988

(Sabyasachi Mukharji, S. Ranganathan JJ)

22.08.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. Special leave granted. The appeal is disposed of herein after hearing counsel for both the parties.
2. The appellant-landlord filed a suit for possession in the civil court of Hissar in Haryana. The respondent is the tenant in the shop situated at the Raj Guru Market which had been rented out to the respondent in 1978. The suit was filed on the basis that the respondent was in arrears of rent from December 1, 1981 to May 31, 1982 and the tenancy of the respondent had been terminated by giving him notice. The suit was filed for recovery of possession on the termination or expiry of the period of tenancy. It was filed because of Section 1 (3) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (herein after referred to as 'the Act'). The Act was Passed with the object to control the increase of rent of certain buildings and rented land situated within the limits of urban areas and the eviction of tenants therefrom. For our present purpose, it would suffice if we bear in mind two relevant provisions. Section 1 (3) of the Act provides as Follows;

Nothing in this Act Shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion.
3. Section 13 of the Act deals with the eviction of tenants and sub-section (1) thereof provides that the tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of that section. The section thereafter enumerates the statutory grounds for eviction upon which eviction is permitted which incidentally are more or less similar statutory grounds all over the country.
4. On or about February 15, 1983, the respondent-tenant filed his written statement. In November 1984, the respondent-tenant moved an application for dismissal of the suit of the appellant stating that the shop in question was constructed in June 1974 as such the period of ten years had elapsed by June 1984 in terms of Section 1 (3) of the Act, and, as such, the immunity from the application of the Act had expired. The suit under the Act is not maintainable and the jurisdiction of the civil Court stands barred. The learned Sub-Judge, Hissar, held that the decree was not necessary to be passed within the exemption period of ten years under Section 1 (3) of the Act. The learned Sub-Judge accordingly dismissed the respondent's application. Aggrieved thereby, the tenant-respondent preferred a revision to the High Court of Punjab and Haryana. The High Court held that as the suit

had not been decreed within the period of ten years the building in question came within the operation of the Act and as such the Rent Act was applicable and the civil court had no jurisdiction. In the premises, the learned Judge of the High Court dismissed the suit pending before the Sub-Judge. Aggrieved thereby the Appellant has come up in appeal to this Court.

5. More or less identical provisions of the U. P. Act had come up for consideration before this Court in the case of Vineet Kumar v. Mangal Sain Wadhwa. The only point that was urged before this Court in that decision was whether the premises which was not ten years old on the date of the suit and was exempted from the operation of the new Rent Act, could be governed by it if ten years expired during the pendency of the litigation. The relevant provisions of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 provided as follows :

20. Bar of suit for eviction of tenant except on specified grounds-(1) Save as provided in sub-section (2), no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner :

Provided that nothing in this sub-section shall bar a suit for the eviction of a tenant on the determination of his tenancy by efflux of time where the tenancy for a fixed term was entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceeding, which is either recorded in court or otherwise reduced to writing and signed by the tenant.

6. In Vineet Kumar v. Mangal Sain Wadhwa, the respondent-landlord filed a suit for eviction and for arrears of rent and damages, inter alia, on the grounds that the building in question was not covered by the U. P. Urban Buildings (Regulation of Letting, rent and Eviction) Act, 1972 in view of the exemption granted to new buildings under Section 2 (2) of the said Act and the defendant-appellant had defaulted in payment of rent. The tenant had resisted the claim on the ground that having regard to the date of construction of the building, it was covered by the Act, that the plaint having not been amended so as to bring the suit under the Act, it was barred by Section 20 and that there was no default in payment of rent. As mentioned hereinbefore, during the pendency of the litigation the exemption granted under Section 2 (2) expired. The question was whether the premises which was not ten years old on the date of the suit and was exempted from the operation of the Rent Act, would be governed by it if ten years expired during the pendency of the litigation. Allowing the appeal, this Court held that the appellant must get benefits of the Act which became applicable to the premises in question during the pendency of the litigation. That would not affect the cause of the action in that case. It was held that the contention that the court had to decide the case on the basis of cause of action that accrued prior to the date of filing the suit and not on a new cause of action was not sustainable. It was further held that normally amendment in plaint is not allowed if it changes the causes of action. However, where the amendment does not constitute an addition of a new cause of action, or raise a new case, but amounts to no more than adding to the facts already on the record, the amendment would be allowed even after the statutory period of limitation. This Court observed that processual justice required that the events and development subsequent to the institution of proceedings must be taken into consideration in appropriate cases to promote substantial justice. Vineet Kumar case was discussed and explained by this Court in Nand Kishore Marwah v. Samundri Devi. This Court held that in view of Section 2 (2) of the 1972 Act, if an assessment is made of the newly built house then the date of completion of the building, the date from which 10 years are to be completed, will be the date on which the first assessment was made. Therefore, the period of 10 years have to be computed from October 1976. This Court further held

that if a tenant is entitled to the advantage of Sections 39 and 40 of the Act and the period of ten years elapses during the pendency of the eviction suit or appeal before this Court (which is the continuation of the suit), then the tenant would be entitled to the benefits of the Act. This Court further held that within ten years as provided for in Section 2 (2) restriction on the institution of suit as provided for in Section 20 (1) will not be applicable. It was held that during the pendency of the litigation even if ten years expired the restriction under Section 20 will not be attracted as the suit had been instituted within ten years. It is well settled that the rights of the parties will have to be determined on the basis of the rights available to them on the date of the suit. This Court pointed out that the attention of the Court had not been drawn to the decision of this court in *Om Prakash Gupta v. Digvijendrapal Gupta*. This Court referred to the words used in Section 20 of the said Act which emphasised that "no suit shall be instituted for eviction". This clearly indicates that the restriction put under Section 20 of the said Act is to the institution of the suit itself and, therefore, it is clear that if the provisions of this Act applies then no suit for eviction can be instituted except on the grounds specified in the sub-sections of that section of the Act. This applies more so in the instant case where the Section 13 of the Act provides that the tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this section. Those provisions would not be applicable to a suit instituted within ten years from the date of the completion of the buildings in question. That is the plain meaning of the expression "use". It was further to be borne in mind that in finding out the plain meaning of the expression "use", the language, the background, the context, the purpose, these all have to be borne in mind.

7. In *Ram Saroop Rai v. Smt. Lilavati*, Krishna Iyer, J. has explained the Section 2 (2) of the U. P. Act as follows : (SCC p. 453, para 1)

The legislature found that rent control law has a chilling effect on new building construction, and so, to encourage more building operations, amended the statute to release, from the shackles of legislative restriction, 'new construction' for a period of ten years. So much so, a landlord who had let out his new building could recover possession without impediment if he instituted such proceeding within ten years of completion.

8. It is well settled that no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim "*actus curiae neminem gravabit*" - an act of court shall prejudice no man. Therefore, having regard to the time normally consumed for adjudication, the ten years exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within ten years and even then within that time it may not be disposed of. That will make the ten years holiday from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else.

9. Judicial time and energy is more often than not consumed in finding what is the intention of the Parliament or in other words, the will of the people. Blackstone tells us that the fairest and the most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable. And these signs are either the words, the context, the subject matter, the effects and consequences, or the spirit and reason of the law. See *Commentaries on the Laws of England* (facsimile of 1st edn. of 1765, University of Chicago Press, 1979, Vol. 1, p. 59). Mukherjea, J. as the learned Chief Justice then was, in *Poppatlal Shah v. State of Madras* said that each word, phrase or sentence was to be construed in the light of purpose of the

Act itself. But words must be construed with imagination of purpose behind them said Judge Learned Hand, a Long time ago. It appears, therefore, that though we are concerned with seeking of intention, we are rather looking to the meaning of the words that the legislature has used and the true meaning of what words as was said by Lord Reid in Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A G. We are clearly of the opinion that having regard to the language we must find the reason and the spirit of the law. If the immunity from the operation of the Rent Act is made and depended upon the ultimate disposal of the case within the period of exemption of ten years which is in reality an impossibility then there would be empty reasons. In our opinion bearing in mind the well settled principles that the rights of the parties crystallise to (sic on) the date of the institution of the suit as enunciated by this Court in Om Prakash Gupta v. Digvijendrapal Gupta, the meaningful construction must be that the exemption would apply for a period of ten years and will continue to be available until suit is disposed of or adjudicated. Such suit or proceeding must be instituted within the stipulated period of ten years. Once rights crystallise the adjudication must be in accordance with law.

10. In that view of the matter, we are of the opinion that the High Court was in error in the view it took. The judgment and order of the High Court are set aside and the order of the learned Sub-Judge is restored. The suit will now proceed in accordance with law in the light of the observations herein as expeditiously as possible. The costs of the appeal will be the costs of the suit.

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