M/s. Babu Ram Gopal and Others

Vs

Mathra Dass

Civil Appeal No. 828 of 1981

(V.R. Krishna Iyer, L.M. Sharma JJ)

28.02.1990

JUDGMENT

SHARMA, J. -

1. This appeal by a tenant-defendant is directed against the decree for his eviction from a shop on the ground mentioned in Section 13(2)(v) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act') which renders the tenant liable for eviction if he has ceased to occupy the rented premises for a continues period of four months without reasonable cause. The questions which are involved in this case are whether a tenant can be said to have ceased to occupy a building merely for the reason that he temporarily suspends the actual physical user thereof; and whether a landlord is entitled to a decree even if the tenant has re-occupied the premises before the eviction proceeding was commenced.

2. The landlord-respondent filed the present application for eviction of the appellant before the Rent Controller in March 1973 and inter alia pleaded that for a continuous period of more than four months the appellant had ceased to occupy the shop during 1969 to 1971 and he was, therefore, liable to be ejected. The appellant disputed the allegation, but, the Rent Controller as well as the Appellate Authority rejected the defence and accepted the plaintiff's plea. After unsuccessfully moving the High Court under Section 15(5) of the Act, the tenant has filed the present appeal by special leave.

3. The grounds on which a tenant can be asked to quit are mentioned under Section 13(2) of the Act, and under clause (v) thereof the Controller may pass an order for the tenant's eviction if he is satisfied,

> "13. (2)(v) That where the building is situated in a place other than a hill-station, the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause."

Mrs. Urmila Kapoor appearing in support of the appeal contended that the appellant has all along been in possession of the shop which was never vacated and merely for the reason that the shop remained closed for a temporary period he cannot be said to have ceased to occupy the same. The argument is that the appellant's occupation of the shop was never interrupted as it was in his effective control, although closed and secured under the appellant's lock which nobody ever disturbed. We do not find ourselves in a position to accept the interpretation of the section as attempted on behalf of the appellant. The reason of including clause (v) in Section 13(2) is to ensure that buildings, which are scarce in number specially in the towns, necessitating rent control

legislation, do not remain unused at the instance of the tenants who do not actually need them. A tenant who is in possession of a building in the legal sense only cannot be said to be in occupation thereof for the purpose of Section 13(2)(v); otherwise a question of his eviction as envisaged in that section would not arise. The section, by making provisions for his ejectment, assumes that he is in possession, but still includes cessation of occupation as one of the grounds. The cause, therefore, has to be interpreted in this background and it must take colour from the context. We, therefore, hold that if a tenant stops the business which he is carrying on in a shop and closes the premises continuously for a period of four months without a reasonable cause he will be liable for eviction.

4. The other point urged by Mrs. Kapoor needs more serious consideration. The non-occupation of the premises by the tenant did not continue after 1971, and the eviction petition was filed in 1973. Is it permissible to hold, in this situation, that the ground mentioned in Section 13(2)(v) has been made out ? On behalf of the respondent it has been contended that since in a number of Rent Acts of other States a similar ground specifically requires such non-occupation for a period immediately preceding the date on which the ejectment application is filed, the present Act which does not use identical language should be interpreted differently. Reliance has also been placed on the observations of this Court in Gajanan Dattatraya v. Sherbanu Hosang Patel ((1975) 2 SCC 668 : (1976) 1 SCR 535) a case arising under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

5. The prayer for eviction, in the above case, was founded on a plea of sub-letting, and the ground in this regard, as mentioned in Section 13(1)(e), is "that the tenant has, since the coming into operation of the Act, unlawfully sublet" the premises. The court rejected a similar contention of the tenant, as in the present case, by holding that, (SCC pp. 670-71, para 17)

> "To accede to the contention of the appellant would mean that a tenant would not be within the mischief of unlawful sub-letting if after the landlord gives a notice terminating the tenancy on the ground of unlawful sub-letting the sub-tenant vacates. The landlord will not be able to get any relief against the tenant in spite of unlawful sub-letting. In that way the tenant can foil the attempt of landlord to obtain possession of the premises on the ground of sub-letting every time by getting the sub-tenant to vacate the premises."

The observations, and consequently the decision were based on the law requiring service of notice to quit before starting an action for ejectment as assumed earlier before the decision of 7 learned Judges in V. Dhanpal Chettiar v. Yesodai Ammal ((1979) 4 SCC 214 : (1980) 1 SCR 334) holding otherwise was given. The provisions of Section 13 had, then, to be construed in a manner which did not render the same completely ineffective. Now, that is not the position. It is true that the court in the former decision also observed that the tenant's liability to eviction arose once the fact of unlawful sub-letting is proved, but, the very next sentence further clarifies the position in the following words :

> "At the date of the notice, if it is proved that there was unlawful sub-letting, the tenant is liable to be evicted."

It is significant to note that according to the decision the sub-letting had to continue till the date of the notice. If the requirement of notice disappears, the above observation must be read as referring to the application for eviction and not the notice.

6. The observations in an earlier decision of this Court in Goppulal v. Thakurji Shriji Shriji Dwarkadheeshji ((1969) 1 SCC 792 : (1969) 3 SCR 989) may be of some help in the present context. This decision was discussed in Gajanan Dattatraya case ((1975) 2 SCC 668 : (1976) 1 SCR 535) and was distinguished on the ground that the court there had no occasion to consider the question as to whether sub-letting to be within the mischief of the relevant statute is to subsist at the date of the suit. It is true that the court did not have to consider and decide directly the present controversy, but, the comment made on the language of the statute concerned is helpful to the tenant. The dispute, in that case, depended on the interpretation of Section 13(1)(e) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 which forbids the court to pass a decree for eviction unless inter alia "the tenant has assigned, sublet or otherwise parted with the possession" of the disputed premises. There the words "has sublet" needed construing, while in the case before us they are "has ceased to occupy". In this background, the court said that the use of present perfect tense contemplates a period even connecting in some way with the present time.

7. So far the language of some rent Acts, specifically indicating that the period of non-occupation should be one immediately preceding the suit, is concerned, the learned counsel is right that a comparison of the language of the present Act lends some support to his stand, but this alone does not outweigh the other relevant circumstances. On the other hand, if the provisions of several other Acts are examined, it will be seen that the section has been phrased in a way which avoids the use of present perfect tense. As an illustration, the provisions of the Bihar Rent Act may be seen, which forbids the eviction of a tenant "except in execution of a decree passed" for sub-letting (or for other grounds mentioned therein). Besides, as pointed out in Nathia Agarwalla v. Musst. Jahanara Begum ((1966) 3 SCR 926 : AIR 1967 SC 92) comparing statutes of different States is not to be commended because similarity or variation in the laws of different States is not necessarily indicative of a kindred or a different intention. The reason for this view was expressed in the following language : (SCR p. 929)

> "Enactments drafted by different hands, at different times and to satisfy different requirements of a local character, seldom afford tangible or sure aid in construction. We would, therefore, put aside the Rent Control Acts of Madras, Bihar, Delhi and other States, because in these States the problem of accommodation in relation to the availability of lands and houses and the prior legislative history and experience, cannot be same as in Assam."

8. On an examination of all the provisions of the Act and on taking into account the other relevant considerations, we are of the view that the non-occupation of the premises by a tenant must continue till the date of the filing of the application for his eviction on the ground covered by Section 13(2)(v). Accordingly, the appeal is allowed and the decision of the courts below is set aside. The parties shall bear their own costs throughout.

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