

East India Corporation Ltd.

Vs

Shree Meenakshi Mills Ltd.

Civil Appeal No.4032 of 1984

(T. K. Thommen, R. M. Sahai JJ)

16.04.1991

JUDGEMENT

THOMMEN, J.:-

1. The appellant, the East India Corporation Limited, is the defendant in O.S. No. 623 of 1980, which is a suit instituted by the respondent, Shree Meenakshi Mills Limited, for recovery of possession of a building on the ground of arrears of rent, etc. The respondent-plaintiff alleged that the appellant-defendant was the tenant of the building in question and that it has not paid the agreed rent of Rs. 900/- per month for a long period, despite persistent demands, and has thus been in "wilful default" of payment of the agreed rent. The appellant denied these allegations. It specifically denied any relationship of landlord and tenant between the parties, and contended that its occupation of the building was not as a tenant of the respondent, but as one of the "associates" or "co-sharers" or "co-owners". The suit was decreed. The decree of the learned Munsif was affirmed in appeal by the first appellate Court as well as by the High Court. All the three Courts, rejecting the appellant's contentions to the contrary, found that it was a tenant of the respondent; it questioned without bona fide the respondent's title as landlord; it was in default of payment of rents, and, it was liable to be evicted from the building. Against these concurrent findings, the present appeal was brought to this Court by means of a special leave petition. Leave was granted by order of this Court dated 24-9-1984.

2. At the time of the institution of the suit or the grant of leave by this Court, the building in question did not come within the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 ('the Act') for the agreed rent, as alleged by the plaintiff respondent and as found by all the Courts, was Rs. 900/- per month, and as such was outside the limit prescribed under S. 30(ii) of the Act for a residential building to fall within the statutory ambit. S. 30, as it stood at the relevant time, stated :-

"30. Exemption in the case of certain buildings.- Nothing contained in this Act shall apply to-

(i) any building for a period of five years from the date on which the construction is completed and notified to the local authority concerned; or

(ii) any residential building or part thereof occupied by any one tenant if the monthly rent paid by him in respect of that building or part exceeds four hundred rupees.

....."

3. Clause (ii) of S. 30 was, however, struck down by this Court in *Rattan Arya v. State of Tamil Nadu* (1986) 3 SCC 385: (AIR 1986 SC 1444). This Court- stated:

"..... Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 has to be struck down as violative of Art. 14 of the Constitution. A writ will issue declaring S. 30(ii) as unconstitutional".

As a result of this declaration of the constitutional invalidity of S. 30(ii), the Act in question, according to the appellant, has to be read as if Cl. (ii) of S. 30 was never brought into force, and consequently all residential buildings, which are older than five years (see Cl (i) of S. 30) and let out for whatever rent, came within the ambit of the Act. Accordingly, although the suit was properly instituted in the Civil Court without regard to the special provisions of the Act, it is now contended that as a result of the declaration by this Court of the constitutional invalidity of Cl. (ii) of S. 30, which excluded from the purview of the Act any building or part thereof let out on a monthly rent of R.S. 400/ -, the decree of the Civil Court, whatever be the merits of the findings on the respective contentions of the parties, has become null and void and of no effect whatever. This contention of the appellant is based on the principle that any decree passed by an incompetent Court is a nullity. The appellant's counsel relies on the principle reiterated by this Court in *Sushil Kumar Mehta v. Gobind Ram Bohra* (1990) 1 SCC 193 and the earlier decisions referred to therein on the point. In *Kiran Singh v. Chaman Paswan* (1955) 1 SCR 117 at p. 121: (AIR 1954 SC 340 at p. 342), Venkatarama Ayyar, J. pointed out:

"...It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non iudice, and that its judgment and decree would be nullities."

3A. Dr. Y. S. Chitale, appearing for the respondent, however, submits that the decree passed by the Civil Court in the present case is not a nullity for the Act has not barred the jurisdiction of the Civil Court, but only prohibits execution of a decree for eviction otherwise than in accordance with the relevant statutory provisions. Such a decree, he says, is not void, but is merely under an eclipse, and will become executable as and when the bar is removed. He refers to S. 10 of the Act which reads:

"Section 10.- Eviction of tenants.-(1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or Ss. 14 to 16:

....."

4. Relying on certain observations of this Court in *B. V. Patankar v. C. G. Sastry* (1961) 1 SCR 591: (AIR 1961SC 272), in the context of the Mysore House Rent and Accommodation Control Order, 1948, Dr. Chitale submits. that, like in that case, what is prohibited by S. 10 in the present case is execution of the decree and the validity of the decree as such is not affected. We do not agree.

5. Section 9 of the Mysore House Rent and Accommodation Control Order, 1948 reads:-

"S. 9(1). A tenant in possession of a house shall not be evicted therefrom whether in execution of a decree or otherwise except in accordance with the provisions of this clause.

..... "

Section 16 of that order reads:

"S. 16.- Nothing in this order shall prevent a landlord from filing a suit for eviction of a tenant before a competent Civil Court, provided that no decree for eviction of a tenant, passed by a Civil Court shall be executed unless a certificate to that effect is obtained from the Controller."

Section 16 of the Mysore Order, 1948, thus specifically allows the institution of a civil suit for eviction of a tenant, although a decree passed by such a Court for eviction cannot be executed without a certificate to that effect from the Controller. Jurisdiction of the Civil Court is thus not only not barred but specifically preserved, except for the restriction imposed on the execution of decrees in matters of eviction. On the other hand, such a provision is significantly absent in the enactment in question. The provisions of the Mysore Order considered by this Court in *B. V. Patankar v. C. G. Sastry* (1961) 1 SCR 591 : (AIR 1961 SC 272) and those of the Act in question here are not in *pari materia*. The observations of this Court relied on by Dr. Chitale are not, therefore, helpful in understanding the provisions in, question in the instant case.

6. Section 10 of the Act, as seen above, prohibits eviction of a tenant whether in execution of a decree or otherwise except in accordance with the provisions of that section or Ss. 14 to 16. These provisions as well as the other provisions of the Act are a self-contained code, regulating the relationship of parties, creating special rights and liabilities, and, providing for determination of such rights and liabilities by tribunals constituted under the statute and whose orders are endowed with finality. The remedies provided by the statute in such matters are adequate and complete. Although the statute contains no express bar of jurisdiction of the Civil Court, except for eviction of tenants "in execution or otherwise", the provisions of the statute are clear and complete in regard to the finality of the orders passed by the special tribunals set up under it, and their competence to administer the same remedy as the Civil Courts render in civil suits. Such tribunals having been so constituted as to act in conformity with the fundamental principles of judicial procedure, the clear and explicit intendment of the legislature is that all questions relating to the special rights and liabilities created by the statute should be decided by the tribunals constituted under it. Although the jurisdiction of the Civil Court is not expressly barred, the provisions of the statute explicitly show that, subject to the extraordinary powers of the High Court and this Court, such jurisdiction is

impliedly barred, except to the limited extent specially provided by the statute. See in this connection the principle stated by this Court in *Dhulabhai v. State of Madhya Pradesh* (1968) 3 SCR 662: (AIR 1969 SC 78). See also *Secy of State v. Mask & Co.* (1940) 67 Ind App 222 (AIR 1940 PC 105); *Releigh Investment Co. Ltd. v. Governor General in Council* (1947) 74 Ind App 50 : (AIR 1947 PC 78) and *Barraclough v. Brown*, 1897 AC 615 (HL).

7. Judged by this test, the jurisdiction of the Civil Court in respect of eviction of tenants is barred except to the extent and subject to the conditions prescribed under S.10. The second proviso to S. 10(1) reads:

"Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded."

8. What is stated in the second proviso to S.10(1) is the sole circumstance in which the Civil Court is invested with jurisdiction in matters of eviction. But this jurisdiction cannot be invoked otherwise than as stipulated in the second proviso. This means that the condition precedent to the exercise of jurisdiction by a Civil Court is that the tenant should have denied the title of the landlord or claimed right of permanent tenancy and the Controller should, on such denial or claim by the tenant reach a decision whether such denial or claim is bona fide. Upon such decision, the Controller must record a finding to that effect. In that event, the landlord is entitled to sue for eviction of the tenant in a Civil Court. Where these conditions are satisfied, the Civil Court will have jurisdiction to pass a decree for eviction on any of the grounds mentioned in S. 10 or Ss. 14 to 16, notwithstanding that the Court has found that the tenant's denial of the landlord's title does not involve forfeiture of the lease or his claim of right of permanent tenancy is unfounded. Except to this limited extent, the jurisdiction of the Civil Court in matters of eviction of a tenant is completely barred and the jurisdiction in such matters is vested in the tribunals set up under the statute.

9. Significantly, the jurisdiction of the Civil Court can be invoked only where the Controller comes to a decision, and record a finding, that the denial or claim by the tenant, as aforesaid, is bona fide. If the Controller were to come to the opposite conclusion, no question of invoking the jurisdiction of the Civil Court would arise. But the decision of the Controller is concerned solely with the bona fides, and not the correctness or validity, of the denial or claim, for these difficult questions of title are by the statute reserved for decision by the appropriate Civil Court which is the more competent forum in such matters. (See the principle discussed in *Magiti Sasamal v. Pandab Bissoi* (1962) 3 SCR 673: (AIR 1962 SC 547)). In such an event, the Civil Court will become competent to pass a decree for eviction on any of the grounds mentioned in S. 10 or Ss. 14 to 16. On the other hand, if the decision of the Controller is that the tenant's denial or claim is not bona fide, the jurisdiction of the Civil Court cannot be invoked by the landlord and the Controller will then be the competent authority to order eviction, after affording the parties a reasonable opportunity of being heard, on any one of the grounds specified under the statute, including the ground that the tenant has, without bona fide, denied the landlord's title or claimed right of permanent tenancy. What is significant is that the decision of the Controller, duly recorded by him, as regards the bona fide denial or claim by the tenant is the condition precedent to the invocation of power of the Civil Court. Any suit instituted by the landlord for eviction of a tenant from a building falling within the ambit of the Act,

otherwise than as stipulated by the section is, therefore, incompetent for lack of jurisdiction of the Court and any decree of the Court in such a suit is null and void and of no effect.

10. In the present case, the procedure stipulated in the second proviso to S. 10 has not been complied with. At the time of the institution of the suit, the building in question did not come within the ambit of the Act, owing to the exclusionary provision contained in Cl. (ii) of S. 30, but after leave to appeal was granted by this Court, the applicability of the Act was extended to the building by reason of the decision of this court. In *Rattan Arya v. State of Tamil Nadu* (1986) 3 SCC 385 : (AIR 1986 SC 1444) declaring the invalidity of Cl. (ii) of S. 30 on account of its inconsistency with Art. 14 of the Constitution. Whatever be the consequence of that declaration - whether it has rendered the statutory provision null and void and of no effect (See *Behram Khurshed. Pesikaka v. State of Bombay* (1955) 1 SCR 613: (AIR 1955 SC 123) and *Saghir Ahmad v. State of U.P.* (1955) 1 SCR 707: (AIR 1954 SC 728)), or, merely inoperative, unenforceable and dormant to be revitalised on subsequent removal of the constitutional ban (See *Bhikaji Narain Dhakras v. State of Madhya Pradesh* (1955) 2 SCR 589 : (AIR 1955 SC 781) and *M. P. V. Sundararamier & Co. v. State of Andhra Pradesh* (1958) SCR 1422: (AIR 1958 SC 468)) - in either event, the Civil Court acting without the aid of the exclusionary provision in Cl. (ii) of S. 30, during the period of invalidity, has become *coram non judice* and its proceedings resulting in the decree a nullity (See *Kiran Singh v. Chaman Paswan* (1955) 1 SCR 117 at p. 121 (AIR 1954 SC 340 at p. 342)).

11. In the circumstances, we set aside the decrees of the Courts below. The appeal is allowed and the appellant is entitled to costs throughout.

Appeal allowed.

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