

Ramesh Chandra

Vs

IIIrd Additional District Judge and others

Civil Appeal No. 1670 of 1982

(L. M. Sharma, V. Ramaswami, B. P. Jeevan Reddy JJ)

22.01.1992

JUDGEMENT

B. P. JEEVAN REDDY, J.:-

1. This appeal is preferred by the landlord against the judgment and order of the Allahabad High Court allowing Civil Miscellaneous Writ No. 6510 of 1979 filed by the respondent-tenant.
2. The petitioner instituted a suit for eviction of the respondent-tenant in the year 1977. According to him, the house was constructed in 1968 and, that the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'the Act') did not apply to it. The suit was preceded by a notice under S. 106 of the Transfer of Property Act terminating the respondent's tenancy. The respondent-tenant resisted the suit contending that the building was an old construction to which the Act was applicable. He submitted that since none of the grounds mentioned in sub-sec. (2) of S. 20 were made out, decree for ejection cannot be passed.
3. The trial Court dismissed the suit holding that the Act applied to the house and because none of the grounds contemplated by Section 20(2) was made out, the suit must fail. It was held that the tenant was entitled to the benefit of Section 39 of the said Act. A further finding recorded was to the effect that the defendant was not in arrears of rent for a period of four months as alleged by the petitioner-landlord and, therefore, the notice issued under Section 106 of the Transfer of Property Act was invalid.
4. Aggrieved by the judgment of the trial Court, the petitioner preferred a revision under Section 25 of the Provincial Small Cause Courts Act which was heard and allowed by the learned IIIrd Additional District Judge, Nainital. The learned District Judge found that the house was constructed in the year 1968 and, therefore, the Act did not apply thereto till 1-9-1978. Inasmuch as the suit was instituted on 1-6-1977 i.e., prior to the Act becoming applicable to the building, the suit was properly instituted. Since the Act did not apply, he held, Section 20 (4) was not available to the tenant. He, however, held that benefit of Section 39 of the Act was available to the tenant but since he did not comply with the requirements of the said section, it did not come to his rescue. Accordingly, he decreed the suit for eviction and also for rent.
5. Aggrieved by the judgment and order of the learned IIIrd Additional District Judge, Nainital, the tenant approached the Allahabad High Court by way of Civil Miscellaneous Writ No. 6510 of 1979. The learned Judge who heard and disposed of the Writ Petition allowed the same purporting to rely

upon the decision in *Ratan Lal Shinghal v. Smt. Murti Devi*, (1980) 4 SCC 258: (AIR 1980 SC 635) and another decision of the Allahabad High Court. According to the said decisions, the learned Judge held, the Act applied even to the buildings constructed prior to the commencement of the said Act, which means that eviction can be decreed only if one or the other ground mentioned in sub-section (2) of Section 20 is satisfied. Since none of the grounds mentioned in the said sub-section were satisfied in this case, the learned Judge held, the suit is liable to fail. It is the correctness of the said view that is questioned in this appeal.

6. The learned counsel for the landlord-petitioner Sri Hari Swarup submitted that the decision in *Ratan Lal Shinghal* (AIR 1980 SC 635) has been overruled in a later decision of this Court in *Om Prakash Gupta v. Dig Vijendrapal Gupta*, (1982) 2 SCC 61 : (AIR 1982 SC 1230 (2)). According to the later decision, he submitted, the Act became applicable to the said building only on 1-9-1978 and since the suit was instituted prior to the said date, it is saved and has to be decided without reference to the Act. The respondent's counsel, on the other hand, submitted that the burden of proving the date of construction of the building lay upon the plaintiff and that he has singularly failed to establish that it was constructed in 1968. Indeed the house was an old one and it was merely repaired in the year 1968. He further submitted that the tenant is entitled to the benefit of Section 39 and once it is so, the suit must fail in view of the provision contained therein.

7. U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 came into force on and with effect from 15th July, 1972. Section 43 of the Act repealed the United Provinces (Temporary) Control of Rent and Eviction Act, 1947. Sub-section (2) of Section 43 contains several saving provisions which it is not necessary to mention here. By virtue of Section 1(A) of the 1947 Act, the said Act did not apply to any building which was under erection or was constructed on or after 1st January, 1951. So far as the Act (1972 Act) is concerned sub-section (2) of Section 2 declares that the Act (barring certain provisions specified therein) shall not apply to a building during a period of 10 years from the date on which its construction is completed. Explanation (1) to sub-sec. (2) explains when shall the construction of building be deemed to have been completed. Insofar as its relevant explanation (1) reads as follows:

"(a) the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and in the case of a building subject to assessment, the date on which the first assessment thereof comes into effect, and when the said dates are different, the earliest of the said dates, and in the absence to any such report, record or assessment, the date on which it is actually occupied (not including occupation merely for the purposes of supervising the construction or guarding the building under construction) for the first time."

8. Sub-section (1) of Section 20 provides that save as provided in sub-section (2), no suit shall be instituted for the eviction of a tenant from a building except on the grounds mentioned in sub-section (2), save in the limited situations contemplated by the proviso appended to the sub-section. Sub-section (2) enumerates the grounds on which the tenant can be evicted. Sub-section (4) of Section 20 provides that if in any suit for eviction based on the ground of default in payment of rent, the tenant unconditionally pays or tenders, at the first hearing of the suit, the entire amount of rent and damages for use and occupation due from him together with interest, the Court may, in lieu of passing a decree for eviction, pass an order relieving the tenant against his liability for eviction on the said ground. Section 39 applies to suits pending on the date of commencement of the Act. It provides that in pending suits for eviction, if the tenant deposits, within the time specified therein,

the entire amount and damages due in the Court along with the interest, no decree shall be passed against him on the ground of default in payment of rent.

9. In this case, the learned District Judge has recorded a finding that the building in question was constructed in the year 1968 as submitted by the petitioner-landlord. Though this finding was sought to be challenged before us by the learned counsel for the tenant, we are not prepared to disturb the same, based as it is on relevant and proper evidence. In other words, it was constructed prior to the commencement of the Act. (The 1947 Act did not apply to it because it was constructed subsequent to 1951). The suit was instituted on 1-6-1977 i.e., prior to the completion of 10 years' period from the date of its construction. The question that arises in the above circumstances is whether the Act was applicable to the said building on the date of the institution of the suit. If the Act applies, there can be no doubt that the suit is liable to fail because none of the grounds mentioned in sub-section (2) of Section 20 are made out by the petitioner-landlord.

10. According to the learned single Judge of the Allahabad High Court the decision of this Court in *Ratan Lal Shinghal*, (AIR 1980 SC 635), holds that even though constructed in the year 1968, the building comes within the purview of the 1972 Act. The decision of this Court relied upon by the learned single Judge merely says "that Act 13 of 1972, by which new buildings constructed during the period of 10 years would be given exemption from the operation of the Act does not apply to buildings constructed prior to the amendment". It was held that the Act had no retrospective operation. The opinion expressed in the said decision may best be set out by quoting the relevant portion of the order we have indicated clearly that the contention is sound that Act 13 of 1972 is prospective and applies only to buildings brought into being de novo after the Act came into force". We are unable to see how does this judgment lead to the conclusion that the 1972 Act applied to all the buildings constructed prior to the commencement of the said Act irrespective of their date of construction. Be that as it may, the said judgment was explained in *Om Prakash Gupta*, (AIR 1982 SC 1230 (2)), rendered by a Bench of three Judges. In this decision, it is held that there is no ambiguity in the language of sub-section (2) of Section 2, which says that the Act shall not apply to a building during a period of 10 years from the date on ' which its construction is completed. It was pointed out that the Act nowhere says that the building should have been constructed after the commencement of the 1972 Act. In other words, according to this decision, it is immaterial when the building is constructed - whether subsequent to the commencement of the Act or prior thereto. The Act would not apply to a building for a period of ten years after the completion of its construction. (Insofar as pending proceedings are concerned, the provisions contained in Section 43 have to be kept in mind and observed). Once this is so, construction of the building concerned herein having been completed in August 1968, the 10 years' period extends up to August, 1978, whereas the present suit for eviction was filed long prior thereto . we are therefore of the stand . the suit as instituted had to be disposed of without reference to the Act.

11. So far as the applicability of Section 39 of the 1972 Act to the present suit is concerned, the contention of the learned counsel for the respondent-tenant is that even though the Act did not apply to the building concerned herein, the said provision does apply all the same. We need not express any opinion of this aspect inasmuch as it has been found as a fact by the learned District Judge that the tenant has not complied with the requirements of the said Section. If so, its applicability to these proceedings is merely academic.

12. Yet another contention urged by the learned counsel for the tenant on the strength of *Vineet Kumar v. Mangal Sain Wadhwa*, (1984) 3 SCC 352: (AIR 1985 SC 817), is that inasmuch as the statutory period of ten years expired during the pendency of the suit, the Act became applicable and

the suit must be disposed of only in accordance with the provisions of the Act and in particular sub Section (2) of Section 20. This decision has however, been explained in a subsequent decision in Nand Kishore Marwah v. Samundri Devi, (1987) 4 SCC 382: (AIR 1987 SC 2284), wherein it has been held that the law applicable on the date of the institution of the suit alone governs the suit and the mere fact that the statutory period of 10 years expires during the pendency of the suit/appeal/revision, the Act does not become applicable. It was held that the suit has to be tried and decided without reference to the Act. We are in respectful agreement with the view expressed in Nand Kishore Marwah.

13. For the above reasons, the appeal is allowed. The judgment of the High Court is set aside and that of the learned Illrd Additional District Judge, Nainital is restored. Having regard to the facts of the case, we make no orders as to costs in.this appeal. Appeal allowed.

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