

Pralhad Lalchand Chavan

Vs

Iqbal Hussain Inayat Hussain Badri

Civil Appeal No. 9829 of 1996

(G. T. Nanavati, S. C. Agrawal JJ)

26.07.1996

JUDGMENT

S. C. AGRAWAL, J. –

1. Special leave granted.

2. This appeal by the landlord arises out of a suit for eviction from premises governed by the provisions of the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 (hereinafter referred to as "the Act") and the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as "the Rent Control Order").

3. The Rent Control Order has been made in exercise of the powers conferred by Section 2 of the Act which empowers the State Government by general or special order to provide for regulating the letting and sub-letting of any accommodation or class of accommodation whether residential or non-residential. Clause (b) of Section 2 of the Act prescribes that such order may provide for preventing the eviction of tenants or sub-tenants from such accommodation in specified circumstances. In clause 13 of the Rent Control Order provision has been made for the protection of a tenant against the eviction. The relevant parts of the said clause are reproduced below :

"13. (1) No landlord shall, except with the previous written permission of the Controller :

(a) give notice to a tenant determining the lease or determine the lease if the lease is expressed to be determinable at his option; or

(b) where the lease is determinable by efflux of the time limited thereby require the tenant to vacate the house by process of law or otherwise if the tenant is willing to continue the lease on the same terms and conditions.

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(3) If after hearing the parties the Controller is satisfied :

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(iv) that the tenant has used the house or premises or any part thereof for a purpose other than that for which it was leased; or

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(vi) that the landlord needs the house or a portion thereof for the purpose of his bona fide residence, provided he is not occupying any other residential house of his own in the city or town concerned; or

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he shall grant the landlord permission to give notice to determine the lease as required by sub-clause (1)."

4. On 18-4-1985 the appellant submitted an application before the Rent Controller for grant of permission to issue a notice terminating the lease of the respondent. The appellant sought the permission on grounds (iv) and (vi) of sub-clause (3) of clause 13 of the Rent Control Order. The said application of the appellant was rejected by the Rent Controller by order dated 29-12-1987. The appeal filed by the appellant against the said order was allowed by the Rent Control Appellate Authority by order dated 16-12-1988 and necessary permission to issue notice terminating the lease was granted under ground (vi) of sub-clause (3) of clause 13 of the Rent Control Order, i.e., the landlord needs the house or a portion thereof for the purpose of his bona fide residence, provided he is not occupying any other residential house of his own in the city or town concerned. Feeling aggrieved by the order of the Rent Control Appellate Authority dated 16-12-1988 the respondent moved the High Court of Bombay, Nagpur Bench, Nagpur by filing Writ Petition No. 1745 of 1989. The said writ petition was dismissed by the learned Single Judge of the High Court by judgment dated 8-8-1989. The petition filed for review of the said judgment was dismissed by the learned Single Judge by order dated 29-11-1990. Thereafter, the respondent filed a letters patent appeal against the judgment of the learned Single Judge, which was dismissed by the Division Bench of the High Court. The petition for special leave to appeal against the judgment of the Division Bench was dismissed by this Court. As a result the order granting permission under clause 13 of the Rent Control Order, to issue a notice terminating the lease of the respondent, became final.

5. In the meanwhile after passing of the order of the Rent Control Appellate Authority dated 16-12-1988 granting permission to issue a notice terminating the lease, the appellant, on 3-3-1989, issued a notice under Section 106 of the Transfer of Property Act terminating the lease of the respondent by the end of April 1989 and asking him to hand over vacant possession of the premises on the date of termination of the lease. Since the respondent failed to comply with the said notice and did not deliver possession of the premises, the appellant, on 2-5-1989, filed a suit (Civil Suit No. 100 of 1989) in the Court of the Civil Judge, Junior Division, Amaravati for eviction of the respondent. The said suit of the appellant was decreed by the Civil Judge by judgment dated 31-1-1990 and the respondent was directed to vacate the premises and hand over vacant possession to the appellant. The appeal filed by the respondent against the said decree of the trial court was dismissed by the District Judge, Amaravati by judgment dated 24-3-1994. Thereafter, the respondent filed Civil Revision Application No. 616 of 1994 in the High Court which was allowed by the impugned judgment dated 18-7-1994 on the view that while deciding the appeal the appellate court failed to consider the subsequent events namely that during the pendency of the litigation the appellant had purchased another house and had started residing there and thereby the requirement of the appellant was fulfilled. According to the High Court the landlord secured permission for his bona fide requirement, but during the pendency of the litigation especially in the eviction proceedings, subsequent events regarding the purchase of alternative accommodation occurred and that this aspect has to be taken into consideration. The High Court, therefore, while setting aside the

judgment of the Additional District Judge, Amaravati, has remanded the matter to the Additional District Judge with a direction to consider the subsequent events and adjudicate the matter accordingly. Feeling aggrieved by the said judgment of the High Court the appellant has filed this appeal.

6. Shri V. A. Mohta, the learned Senior Counsel appearing for the appellant, has urged that the scheme of the Rent Control Order is that the protection against eviction that is available to the tenant under clause 13 of the Rent Control Order whereby the landlord is required to obtain the permission of the Rent Controller before issuing a notice terminating the tenancy and such permission can be granted only on a ground mentioned in sub-clause (3) of clause 13 of the Rent Control Order. Shri Mohta has submitted that the order of the Rent Controller granting permission under clause 13 can be challenged before the Rent Control Appellate Authority in appeal under sub-clause (3) of clause 21 and that no further appeal, revision or application for review lies from the decision of the Rent Control Appellate Authority to any other authority whatsoever. Shri Mohta has pointed out that under Section 7 of the Act the jurisdiction of civil courts is barred in respect of any order passed by an officer or authority under an order made under Section 2 of the Act and, therefore, the order granting permission under clause 13 of the Rent Control Order is not open to challenge before the civil court. Such an order can, however, be challenged by filing a writ petition under Article 226 of the Constitution before the High Court. The respondent had availed of the said remedy under Article 226 of the Constitution by filing a writ petition which petition was dismissed by the learned Single Judge and the said judgment of the learned Single Judge was affirmed in letters patent appeal by the Division Bench and the petition filed for special leave to appeal against the said judgment was also dismissed by this Court. As a result, the order granting permission under clause 13(3)(vi) of the Rent Control Order became final and a party cannot be permitted to go behind the order granting permission and to reargue the question whether the appellant is entitled to seek eviction of the respondent from the premises on the ground that he needs the premises for the purpose of his bona fide residence. Shri Mohta has placed reliance on the decision of the Division Bench of the High Court in *R. P. Ghosh v. Pramilabai Ravindra Puri* [1976 Mah LJ 828 : AIR 1977 Bom 181] and the observations of this Court in *Benilal v. State of Maharashtra* [1995 Supp (1) SCC 235].

7. Shri S. Balakrishnan, the learned counsel appearing for the respondent, has submitted that grant of permission to the landlord to issue a notice terminating the tenancy under clause 13(3) of the Rent Control Order does not preclude the tenant from showing that in view of the subsequent events that have occurred after the grant of such permission, the need of the landlord for the premises no longer subsists and he is not entitled to seek eviction of the tenant. Shri Balakrishnan has laid emphasis on the object underlying the protection against eviction given to the tenants under clause 13 of the Rent Control Order and has submitted that to deny to the tenant an opportunity to rely upon subsequent events occurring after the grant of permission would not be in consonance with the decisions of this Court wherein subsequent events have been taken note of by this Court in the context of proceedings for eviction of the tenant on the ground of bona fide need of the landlord.

8. A perusal of the provisions contained in clause 13 of the Rent Control Order shows that the nature of protection which has been conferred on the tenant under the said clause differs from the protection given to the tenant under other similar rent control laws in other States. In most of the rent control laws in force protection against eviction is conferred on the tenant by imposing the requirement that no decree for eviction shall be passed against the tenant except on certain specified grounds or no suit for eviction by the tenant would be filed except on certain specified grounds. Such laws envisage a single Judicial proceeding in which the landlord is required to make out a case

for eviction of the tenant on the basis of any one of the specified grounds and the decree or order for eviction passed by the civil court or the Rent Controller is subject to an appeal or revision and a further appeal or revision in the High Court. The Rent Control Order, however, envisages two separate proceedings. One is the proceeding before the Rent Controller under clause 13 of the Rent Control Order for grant of permission to issue a notice terminating his tenancy which order is subject to appeal before the Rent Control Appellate Authority and judicial review by the High Court under Article 226 of the Constitution. In the event of grant of permission to issue the notice terminating the lease, the proceedings under clause 13 of the Rent Control Order are followed by a second proceeding, viz., a suit for eviction after the landlord has terminated the tenancy by issuing a notice in accordance with the provisions of Section 106 of the Transfer of Property Act. By clause 13 of the Rent Control Order a bar is placed on the right of the landlord to terminate the tenancy of the tenant by requiring him to obtain the necessary permission in that regard from the Rent Controller and such permission can be granted only if any of the grounds specified in sub-clause (3) of clause 13 is made out. In other words under clause 13 the bar that is placed on the right of the landlord to terminate the tenancy of the tenant is lifted when permission to issue notice is granted and thereafter the landlord can proceed to terminate the tenancy in accordance with Section 106 of the Transfer of Property Act and in the event of the tenant not vacating the premises after the termination of the tenancy by such a notice, the landlord can seek the eviction of the tenant by filing a suit on the ground that the tenancy having been terminated under Section 106 of the Transfer of Property Act the tenant has no right to remain in occupation. In the said suit the validity of the order granting permission cannot be assailed by the tenant in view of the bar created by Section 7 of the Act read with clause 21(3) of the Rent Control Order.

9. Shri Balakrishnan does not dispute that it is not open to the respondent to assail the correctness of the Order granting permission under clause 13 of the Rent Control Order in the suit for eviction filed after terminating the tenancy under Section 106 of the Transfer of Property Act. Shri Balakrishnan has, however, stressed that in the suit for eviction and in appeal or revision in that suit it is permissible for the tenant to point out that a decree for eviction cannot be passed in favour of the landlord in view of an event that has occurred subsequent to the grant of permission under clause 13 of the Rent Control Order and that the court dealing with the suit or appeal/revision is obliged to take into account such subsequent event. In our view this contention cannot be accepted. Having regard to the fact that the protection that is available under clause 13 of the Rent Control Order is confined to the first proceeding governing grant of permission to issue a notice for terminating the tenancy and the tenant having been found not entitled to such protection on account of grant of such permission under clause 13 of the Rent Control Order and the said order having become final, it is not open to the tenant to re-agitate the said question in the subsequent proceedings, viz., the suit for eviction, and invoke the protection available under clause 13 in the suit filed by the landlord against the tenant after the tenancy has been terminated on the basis of the permission granted under clause 13 of the Rent Control Order. The scope of enquiry in the subsequent suit is limited to the question whether permission to issue a notice to terminate the tenancy has been granted under clause 13 of the Rent Control Order and if so whether the tenancy has been validly terminated in accordance with the provisions of Section 106 of the Transfer of Property Act and the tenant has lost the right to remain in occupation of the premises let out to him.

10. In *R. P. Ghosh v. Pramila Bai Ravindra Puri* [1976 Mah LJ 828 : AIR 1977 Bom 181] a Division Bench of the Bombay High Court has taken the same view. In that case permission had been granted by the Rent Controller to serve a notice terminating the tenancy under clause 13 of the Rent Control Order on the ground that the premises were required by the landlord for his bona fide personal occupation and an appeal against the said order had been dismissed by the appellate authority. The

landlord had issued a notice to the tenant under Section 106 of the Transfer of Property Act. Thereafter the original landlord died and his legal representatives filed a suit for eviction. It was urged that since the ground on which permission was granted was personal to the landlord and in view of the death of the original landlord the cause of action did not survive and the permission granted by the Rent Controller stood exhausted with the death of the original landlord and that it was obligatory on the part of the legal representatives to prove their own any bona fide need independently and since it had not been done and a fresh permission had not been obtained from the Rent Controller by the legal representatives of the deceased landlord, the suit was not maintainable. The said contention was negated by the Division Bench of the High Court. The High Court held that once permission is granted under clause 13 of the Rent Control Order by the Rent Controller, then the landlord is at liberty to serve notice upon the tenant terminating his tenancy as per provisions of the Transfer of Property Act and it is the Transfer of Property Act which then applied and the provisions of the Rent Control Order do not come into play nor could they affect the question of notice to quit, its requirement or its service etc. once a valid permission from the Rent Controller is obtained. The learned Judges have said :

"The Rent Control Order only provides that such a notice cannot be given unless a written permission of Rent Controller is obtained. It does not lay down any further condition as far as the quit notice under Section 106 of the Transfer of Property Act is concerned. The filing of a suit for ejectment is an independent action. The combined effect of this is that it contemplates two distinct proceedings, one relating to granting of a written permission by the Rent Controller to give notice to determine the lease under the provisions of the Rent Control Order and thereafter filing of a suit for ejectment before a competent civil court after giving necessary notice under Section 106 of the Transfer of Property Act. The Rent Controller or the authority constituted under the Rent Control Order has no authority or jurisdiction to eject a tenant or deliver possession of the property to the landlord. This is the province of a civil court. The filing of the ejectment suit after giving a notice under Section 106 of the Transfer of Property Act is not the continuation of the proceedings instituted before the Rent Controller, but it is an independent and distinct proceeding which is governed by the Code of Civil Procedure and the Transfer of Property Act.

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Obviously exclusive jurisdiction is vested upon the Rent Control Authorities to decide the rights of the parties arising out of the Rent Control Order. A decision of the Rent Controller in this behalf is binding upon a civil court and it is not open for the civil court to go behind the said order.

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Once it is held that the decision of the Rent Controller so far it relates to the matter within his exclusive jurisdiction is consumed, is final and could not be challenged in a suit or in any collateral proceedings, then, in our opinion, the same matter cannot be reopened in a civil suit instituted by the landlord after obtaining permission from the Rent Controller. So far as a suit for ejectment is concerned, the cause of action is not the ground on which the permission is granted by the Rent Controller, but the termination of tenancy of the tenant under the provisions of the Transfer of Property Act. The same gives an occasion for and forms the foundation of the suit. So far as

the ejection suit is concerned, the grounds of ejection are irrelevant. To such a suit the provisions of the Civil Procedure Code and Transfer of Property Act will apply and not the provisions of the Rent Control Order."

11. We are in agreement with the said view of the High Court. It appears that the said decision was not brought to the notice of the learned Judge who decided this matter.

12. The principle that subsequent event should be taken into account by the court while passing a decree can have a limited application in a case like the present one involving two independent proceedings. It would apply at the stage of the first proceeding relating to the grant of permission but would have no application after the order passed in the first proceeding has attained finality. Once the decree or order has become final the tenant is precluded from saying that in view of subsequent events the need or requirement no more existed. [See : *Hasmat Rai v. Raghunath Prasad* [(1981) 3 SCC 103 : (1981) 3 SCR 605] (SCR at p. 617); *D. K. Soni v. P. K. Mukerjee* [(1988) 1 SCC 29] SCC at p. 32).]

13. For the reasons aforementioned, we are of the view that the High Court was in error in holding that the lower appellate court was obliged to take into account the subsequent events regarding the purchase of alternative accommodation by the appellant and in setting aside the judgment of the Additional District Judge and remanding the matter for reconsideration to the said Court. Since, in our opinion, it was not permissible in proceedings arising out of a suit for eviction to take into account the subsequent events having a bearing on order granting permission under clause 13 of the Rent Control Order on the ground of bona fide need of the appellant, the said judgment of the High Court cannot be upheld and has to be set aside.

14. Before we conclude we must say that the existing provisions under the Act and the Rent Control Order relating to eviction of tenant requiring two proceedings - one for grant of permission to issue the notice terminating the tenancy to be followed by a regular suit for eviction - not only lead to multiplicity of proceedings but also cause undue hardship to the parties. It is high time that the legislature gives a fresh look to the said provisions and brings the law in this field in tune with other similar legislations applicable in other parts of the country.

15. In the result, the appeal is allowed, the judgment of the High Court dated 18-7-1994 is set aside and, while dismissing the revision petition filed by the respondent, the judgment and order dated 24-3-1994 passed by the Additional District Judge, Amaravati is restored. In the facts and circumstances of the case, there will be no order as to costs.