

P. K. Vasudeva and Others

Vs

Zenobia Bhanot

Civil Appeals No. 6325 of 1998 with Nos. 6326-27 of 1998

(V. N. Khare S. N. Phukan JJ)

11.08.1999

JUDGMENT

V. N. KHARE, J. –

1. Since common questions of fact and law are involved in these civil appeals, as such they are being disposed of by a common judgment.

2. In all these appeals the appellants are the tenants and the respondent is the landlady. The respondent herein owns a premises in the city of Chandigarh. There were four separate tenements in the said building, two of which are occupied by the two appellants herein. In the year 1975, the husband of the respondent landlady who was a government servant retired from service and on 5-1-1985 he died. The State Legislature of Punjab amended the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act"). By the aforesaid amendment a new Section 13-A was added in the Act. The aforesaid Section 13-A reads as under :

"13-A. Right to recover immediate possession of residential or scheduled building to accrue to certain persons where a specified landlord at any time, within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, whichever is later, applies to the Controller along with a certificate from the authority competent to remove him from service indicating the date of his retirement and his affidavit to the effect that he does not own and possess any other suitable accommodation in the local area in which he intends to reside to recover possession of his residential building or scheduled building, as the case may be, for his own occupation, there shall accrue, on and from the date of such application to such specified landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether expressed or implied), custom or usage to the contrary, a right to recover immediately the possession of such residential building or scheduled building or any part or parts of such building if it is let out in part or parts."

3. By notification dated 15-12-1986 Section 13-A was extended to the Union Territory of Chandigarh. After this provision was extended to the Union Territory of Chandigarh the respondent landlady filed four separate applications before the Rent Control Officer, Chandigarh seeking eviction of the tenants under Section 13-A of the Act. By an order dated 27-1-1989 the Rent

Controller passed an order of eviction against one of the tenants, namely, Dr (Mrs) S. K. Gill and subsequently on 15-3-1989 the Rent Controller also passed an order of eviction against another tenant Bhupinder Singh. Dr. (Mrs) S. K. Gill and Shri Bhupinder Singh preferred two separate revisions before the High Court against the orders of the Rent Controller directing for their ejection. The High Court took the view that under the second proviso to Section 13-A the landlord is entitled to recover possession of only one portion of the building and the other tenants cannot be evicted. Accordingly the landlady was given an option to choose any one of the four tenants for eviction. Accordingly the revision was allowed. Consequent upon the order of the High Court the landlady gave her choice for eviction of Dr (Mrs) S. K. Gill and therefore she was evicted from that portion of the building which she was occupying as a tenant. This is the first chapter of the litigation.

4. On 20-12-1989 the Rent Controller following the decision of the High Court rejected the applications of the landlady seeking eviction against the present appellants, namely, S/Shri Surinder Sharma and P. K. Vasudeva. The landlady preferred two separate revisions before the High Court challenging the orders of the Rent Controller rejecting her applications for eviction of the aforesaid two tenants. When the matter came up before the learned Single Judge, he was of the view that the question which arose in the case required consideration by a Division Bench. Consequently the question was referred to a Division Bench of the High Court for giving its opinion. The Division Bench of the High Court was of the view that under Section 13-A of the Act, the landlord could get an order of ejection only against one tenant and not against all the tenants of the building and its opinion was directed to be placed before the Single Judge. Aggrieved, the landlady challenged the aforesaid decision dated 20-7-1992 rendered by the Division Bench of the High Court by filing special leave petitions in this Court. Subsequently these special leave petitions were converted into civil appeals which were numbered as Civil Appeals Nos. 607-08 of 1993. Before the appeals could be decided, a learned Single Judge of the High Court following the opinion given by the Bench dismissed the revision petitions on 10-5-1993. However, this order of the High Court was not challenged by the landlady.

5. Subsequently the aforesaid civil appeals came up for hearing before a Bench of this Court. This Court in CAs Nos. 607-08 of 1993 took the view that Section 13-A gives a special right to the landlord to enable him to exercise the right to recover the residential building for his own occupation, if he does not own or possess any other suitable accommodation. This Court was of the further opinion that where the building is let out in part or parts, an option is given to the landlord either to recover immediately the possession of the whole building or to recover in part or parts thereof. Consequently the civil appeals were allowed by judgment and order dated 14-11-1995. The said decision is reported as *Zenobia Bhanot v. P. K. Vasudeva* ((1995) 6 SCC 770). This is the second chapter of the litigation.

6. After the aforesaid decision by this Court the respondent landlady on 9-12-1995 filed an application before the Rent Controller for executing the order of the Supreme Court. However, the said application was dismissed for default on 26-9-1996.

7. The landlady on 10-12-1996 filed a miscellaneous application in Civil Revision No. 3025 of 1990 under Section 151 CPC which were earlier dismissed for allowing the revision petition and setting aside the order of the Rent Controller dated 20-12-1989 in the light of the order of the Supreme Court dated 14-11-1995 in Civil Appeal No. 608 of 1993. In substance the application was for recall of order dated 10-5-1993. The learned Single Judge by an order dated 1-5-1997 recalled the order dated 10-5-1993 dismissing the revision petition and allowed both the revisions by remanding

the cases to the Rent Controller for decision on merits. The tenants thereafter moved a review petition against the order dated 1-5-1997 but the same was rejected on 10-7-1997. This order was not challenged by the tenants. Consequent upon the order of remand by the High Court, the Rent Controller on 13-6-1997 allowed both the petitions filed by the landlady directing the eviction of S/Shri Surinder Sharma and P. K. Vasudeva who are the appellants before us, following the decision of this Court in Zenobia Bhanot ((1995) 6 SCC 770). The tenants on 23-7-1997 filed special leave petitions in this Court against the orders dated 1-5-1997 passed by the High Court remanding the matter to the Rent Controller although before filing the above special leave petitions the Rent Control Officer had already decided the matter consequent upon the order of remand passed by the High Court. After the dismissal of the review petition on 10-7-1997 by the High Court the tenant filed two revisions before the High Court against the orders dated 13-6-1997 passed by the Rent Controller allowing the petitions of the landlady. The High Court on 24-9-1998 dismissed both the revisions and it is against these orders the appellants are in appeal before us.

8. Learned counsel appearing for the appellants urged that the order dated 10-5-1993 passed by the High Court having attained finality the same could not have been recalled by the High Court by its order dated 1-5-1997. The argument has no merit. The sequence of the events shows that the order of learned Single Judge of the High Court dated 1-5-1997 which was passed on the concession of the counsel for the appellants was acted upon when the Rent Control Officer decided the matter after remand. The order dated 1-5-1997 which was passed by the High Court on agreement of the parties stood exhausted when the parties appeared before the Rent Controller and the Rent Controller decided the matter and thereafter there remained nothing to be challenged. If the appellants wanted they could have promptly challenged the order dated 1-5-1997 passed by the High Court and obtained stay of the remand order. The appellant having chosen not to do so, it is too late in the day to challenge the order dated 1-5-1997 passed by the High Court based on agreement of the parties. Once the counsel for the tenants conceded before the High Court that the revision petitions required remand, it is no longer open to the tenants to contend that the order dated 1-5-1997 passed by the High Court could not have been passed. This is not all. The appellant filed review petitions against the order dated 1-5-1997 recalling the earlier order but the same was rejected. This order at no stage was challenged. We are, therefore, of the opinion that seeing the facts and circumstances of the case it is not open to the appellant to question the order dated 1-5-1997 passed by the High Court.

9. Learned counsel appearing for the appellant then contended that the petitions by the landlady under Section 13-A of the Act before the Rent Controller were not filed within the period of limitation. This submission of learned counsel has no substance. It is on record that the petitions were filed by the landlady on 14-12-1987. In view of this fact, we find that the petitions filed by the landlady before the Rent Controller were well within the period of limitation.

10. In view of the above, we do not find any merits in these appeals and they are accordingly dismissed. However, in the circumstances, there shall be no order as to costs.

11. After this judgment was dictated learned counsel appearing for the tenants stated that in case the appellants are to vacate the premises immediately, they shall be put to great hardship and therefore some reasonable time may be granted to them to vacate the premises. To this, counsel for the respondent has no objection. We, therefore, direct that the appellant tenants shall not be dispossessed from the premises in question up to 30-6-2000 provided the appellants file usual undertaking in this Court within four weeks from today. It is directed that the appellants shall deposit the arrears of rent/damages, if any, within a period of two months from today and continue

to pay month-to-month rent/damages to the landlady as and when it falls due. The appellant tenants, on the expiry of the aforesaid period, shall hand over the vacant and peaceful possession of the premises to the landlady.