SUPREME COURT OF INDIA

Vishwant Kumar

Vs.

Madan Lal Sharma

C.A.No.4070 of 2002

(V. N. Khare CJI., S. B. Sinha and S. H. Kapadia JJ.)

18.03.2004

JUDGEMENT

S.H. Kapadia, J.

1. The *Delhi Rent Control Act, 1958* (hereinafter referred to for the sake of brevity as "the Rent Act") was amended by Act No. 57 of 1988. The said Amending Act came into effect from 1-12-1988. Section 3(c) of the Amending Act provided that the provisions of the Rent Act will not apply to premises whose monthly rent exceeded Rs. 3500/-. The question which arises for determination in this civil appeal is - whether Section 3(c) as amended was applicable to standard rent application, which was pending before the Court on 1-12-1988 when the Amending Act came into force?

2. On 7th May, 1976, an agreement was entered into between the appellant-tenant and the respondent-landlord, under which the appellant took on lease a shop on a monthly rent of Rs. 5000/- per month. On 11-4-1978, the appellant filed a petition for fixation of standard rent under Section 9 of the Rent Act. The contention of the appellant was that the standard rent should be fixed at Rs. 1350/- per month and that the rent agreed upon at Rs. 5000/- per month was excessive. On 23-3-1987, the respondent filed his written statement. The case was pending on 1-12-1988 when Section 3(c) was inserted by Amending Act 57 of 1988. On 27-5-2000, when the case was pending, the respondent moved an application under Section 151, C.P.C. before the Rent Controller seeking dismissal of standard rent application made by the tenant, in view of amended Section 3(c). By order dated 16-12-2000, the Rent Controller allowed the landlord's application and consequently dismissed the standard rent application made by the tenant as incompetent and not maintainable. Being aggrieved, the appellant herein preferred appeal No. 9 of 2001 before the Tribunal which was dismissed. Aggrieved, the appellant herein preferred second appeal bearing S.A.O. No. 4 of 2001 in the High Court which was also dismissed by the impugned judgment dated 4-5-2001. Hence, this Civil Appeal.

3. Mr. V. R. Reddy, learned senior counsel for the appellant submitted that Section 4 conferred a substantive right on the tenant not to pay rent in excess of the standard rent

except to the extent of lawful increase of the standard rent in accordance with the provisions of the Act. On 11-4-1978, pursuant to the right conferred under the Rent Act, the appellant filed a standard rent application. It was urged that on 11-4-1978 the tenant had a right to apply for fixation of standard rent without limit. It was urged that when the lis commenced on 11-4-1978, all the rights of the appellant got crystallized. That the Rent Act was a beneficent legislation and the Amendment Act while inserting Section 3(c) did not intend to obliterate the rights vested in the appellant on the date of his petition for fixation of standard rent. It was vehemently urged that the appellant cannot be made to suffer because of Court's delay. In this connection, learned counsel for the appellant relied on the doctrine of "Actus curiae neminem gravabit" . It was further contended that the right not to pay rent in excess of the standard rent did not depend on its fixation by the Rent Controller, that it was on incident of tenure and consequently it was not in the nature of protective right. In this connection, it was submitted that limited repeal in Section 3(c) did not affect any right, privilege, obligation or liability acquired under any enactment and, therefore, such a right was not intended to be taken away by Section 3(c) of the Rent Act. In support of his arguments, learned counsel relied upon several judgments of this Court.

4. We do not find merit in the above arguments. There is a difference between a mere right and what is right acquired or accrued. We have to examine the question herein with reference to Sections 4, 6 and 9 of the Act. It is correct that under Section 4 of the Rent Act, the tenant is not bound to pay rent in excess of the standard rent, whereas under Section 9 he has a right to get the standard rent fixed. Such a right is the right to take advantage of an enactment and it is not an accrued right. In the case of *D. C. Bhatia v. Union of India, reported in*[1], it has been held that right of a statutory tenant to pay standard rent is a right to be governed by the Act and if the legislature repeals the Act or a part of it, the statutory tenant can do nothing about it. It is a mere right and not a vested right. To the same effect is the judgment of this Court in the case of *Thyssen Stahlunion GMBH v. Steel Authority of India Ltd., reported in*[2] in which it is held that right to be governed by the Act is not a right of an enduring nature. What is unaffected by repeal is a right acquired or accrued under the Act. That till the decree is passed, there is no accrued right. The mere right existing on date of repeal to take advantage of the repealed provisions is not a right accrued within Section 6(c) of the General Clauses Act. Further, there is a vast difference between rights of a tenant under the Rent Act and the rights of the landlord. The right of a statutory tenant to pay rent not exceeding standard rent or the right to get standard rent fixed are protective rights and not vested rights. On the other hand, the landlord has rights recognized under the law of Contract and Transfer of Property Act which are vested rights and which are suspended by the provisions of the Rent Act but the day the Rent Act is withdrawn, the suspended rights of the landlord revive. (See: *Parripati Chandrasekhar Rao and Sons v. Alapati Jalaiah*[3]. Lastly, as held by this Court in the case of D. C. Bhatia (supra), the object of the amending Act, 1988 was to rationalize the Rent Act whereby the protection given to the richer tenant is withdrawn. The object of the Amendment Act, 1988 is to strike a balance between the claims of the landlord who get meagre rent, particularly in times of inflation and the tenants who equally need protection from arbitrary eviction. In the circumstances, we hold that in view of Section 3(c) as amended, the application for fixation of standard rent filed by the tenant on 11-4-1978 has been correctly dismissed as infructuous. We have gone through the decisions cited by the

learned counsel for the appellant. The case of *Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal and Co. and another*[4] was a case involving rights of a landlord under Section 14(1)(b) of the said Act. It was held that a ground of eviction based on illegal sub-letting under Section 14(1)(b) of the Rent Act would not constitute a vested right of landlord, but it would be a right within the meaning of Section 6(c) of the General Clauses Act if proceeding for eviction is pending, however, the tenant has no vested right under the Rent Act as the tenant has only a protective right. In the present case, we are concerned with the nature of rights of the tenant under the Rent Act. The ratio of this decision supports our above view.

5. The judgment of this Court in the case of *Atma Ram Mittal v. Ishwar Singh Punia, reported in*[5] has no application to the present case. In that case, the landlord had instituted the suit, in Civil Court in Haryana, for possession of the shop rented out to the tenant in 1978, on the ground of arrears of rent. It was filed in the Civil Court as the premises in question were exempted for 10 years from the Rent Act. On behalf of the tenant, it was urged that in view of Section 1(3) of the Rent Act the suit was not maintainable and under Section 20 of the Rent Act the jurisdiction of the Civil Court was barred. However, during the pendency of the litigation, the period of exemption/immunity expired. The question was whether the premises which was not 10 years old on the date of the suit and which was exempted from the operation of the Rent Act would be governed by it on expiry of ten years during the pendency of the litigation. The tenant succeeded before the High Court on the ground that the suit was filed during the immunity period and it was barred under Section 20 of the Rent Act. Allowing the appeal, this Court held that if the immunity from the Rent Act depended upon the ultimate disposal of the case within ten years, which is in reality an impossibility, the immunity would become illusory. In coming to that conclusion, this Court invoked the doctrine of actus curiae neminem gravabit - an act of the Court shall prejudice no man. In that case, the rights of the landlord under the Rent Act were suspended for 10 years but on expiry they stood revived. The matter was concerning the rights of the landlord. In the circumstances, the judgment of this Court in the Atma Ram Mittal (supra) has no application to the facts of the present case.

6. Similarly, the judgment of this Court in *M/s. Raval and Co. v. K. G. Ramachandran*[6] has no application to the facts of the present case. In the said case, one of the arguments advanced on behalf of the tenant was that the fixation of fair rent under the Tamil Nadu Rent Control Act could only be downwards from the contracted rent and the contract rent was not to be increased. It was held by this Court, by a majority decision, that the Tamil Nadu Rent Control Act was a complete Code in respect of contractual tenancies as well as statutory tenancies. That the scheme of the Act was different from the Bombay Rent Act. On close reading of the Tamil Nadu Rent Control Act, this Court found that the fair rent was required to be fixed for the building which was something like an incident of tenure regarding the building. This conclusion was based on the scheme of the Tamil Nadu Rent Control Act. Hence, the judgment of this Court in the case of M/s. Raval and Co. (supra) has no application to the facts of this case.

7. In any event of the matter where there is an agreed rent between landlord and tenant either prior or earlier to the Amending Act providing that the provisions of Rent Act will not apply

to the premises whose monthly rent exceeded Rs. 3500/-, the tenant is estopped from taking a plea that it is not the standard rent.

8. For the aforestated reasons, there is no merit in this civil appeal and accordingly the same is dismissed with no order as to costs.

Appeal dismissed.

[1]*(1995) 1 SCC 104)*
[2]*(1999) 9 SCC 334)*
[3]*(1995) 3 SCC 709)*
[4]*(2001) 8 SCC 397)*
[5]*(1988) 4 SCC 284)*
[6]*(1974) 1 SCC 424)*