DELHI HIGH COURT

Bardu Ram

Vs.

Ram Chander, (Delhi)

L.P.A. No. 51 of 1968
(H.R. Khanna, C.J., S.N. Andley S.N. Shankar, V.S. Deshpande and V.D. Misra, JJ.)

12.10.1970

JUDGMENT

H.R. Khanna, C.J.

1. The short question, which arises for determination in this appeal and the six other connected cases which have been referred to the Full Bench, is whether a person, against whom any decree or order for eviction from the premises in dispute has been obtained, is a tenant for the purpose of section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (No. 96 of 1956) (hereinafter referred to as the Slum Areas Act). The circumstances, in which the question has arisen in the instant appeal would be detailed hereinafter. It is not necessary to give the facts of the other cases and the learned counsel for the parties in those cases have confined their arguments to the legal question reproduced above.

2. Badru Ram appellant in the instant appeal is the owner of house No. 11675 situated in Sat Nagar, Karol Bagh, New Delhi. Ram Chander respondent was a tenant under the appellant of one room in that house on a monthly rent of Rs. 21/-. The appellant filed an application under section 14 of the Delhi Rent Control Act, 1958 (59 of 1958) for eviction of the respondent from the above-mentioned room and obtained an order of eviction on June 3, 1964. The appeal of the respondent against the order of eviction was dismissed by the Rent Control Tribunal on November 23, 1964. The premises being in a slum area, the appellant applied to the competent authority under section 19 of the Slum Areas Act for permission to execute the order of eviction. The said application was dismissed by the competent authority on Match 27, 1965 on the ground that the respondent was a poor man and, if evicted, would create a slum

elsewhere. On April 11, 1966 the appellant filed the suit, out of which the present appeal has arisen, for recovery of possession of the room in question and Rs. 497/- as damages for use and occupation for the period from April 10, 1965 to March 31, 1966 at the rate of Rs. 21/- per mensem. It was alleged by the appellant that on the passing of the eviction order on June 3, 1964 the respondent had ceased to be a tenant and had become a trespasser and as such was as liable to be evicted and to pay damages for use and occupation of the room.

3. The respondent denied that he had ceased to be a tenant on the passing of the order of eviction and that his possession had become unlawful. The plea of the respondent was that he continued to be a tenant of the room in question despite the order of eviction and that he was not liable to be dispossessed there from or to pay any damages. An objection was raised on behalf of the respondent that the appellant having not obtained permission of the competent authority as required by clause (a) of sub-section (1) of section 19 of the Slum Areas Act for the institution of the suit, the same was not maintainable. Another plea taken was that the civil court had no jurisdiction to try the suit in view of the provisions of section 37 A of the Slum Areas Act.

4. The trial court held that the respondent, against whom an order of eviction had been made, ceased to be a tenant within the meaning of section 19 the Slum Areas Act and the jurisdiction of the civil court to entertain suit for possession against the respondent was not barred. It was further held that section 37 A of the Slum Areas Act did not bar the jurisdiction of the civil court to try the suit. As the respondent was found to be a trespasser in occupation of the room, he was held to be liable to pay damage, for use and occupation at the rate of Rs. 21/- per mensem. The trial court accordingly awarded a decree for possession of the room in question and for recovery of Rs. 497/-. On appeal the learned Additional District Judge affirmed the findings of the trial court. In second appeal the learned Single Judge held that the word 'tenant' used in section 19 of the Slum Areas Act includes a tenant against whom a decree or order of eviction has been passed. The case was, accordingly, held to fall within the four corners of the above provision of law. Suit for obtaining a decree for possession of the room in question, it was observed, could not be instituted against the respondent without the permission in writing of the competent authority. As no such permission bad been obtained, the suit for recovery of possession was held to be not maintainable. The contention that the civil court had no jurisdiction to try the suit because of the provisions of section 37 A of the slum Areas Act, was repelled. The protection

afforded by section 19, it was further held, did not extend to suits for recovery of damages or rent. In the result the decree for recovery of Rs. 497/- was maintained but the suit for recovery of possession of the room was dismissed.

The present appeal under clause 10 of the Letters patent was the rafter filed after the requisite certificate had been granted by the learned Single Judge.

When the appeal came up for hearing before Dua CJ. and Shankar J. on December 11, 1968 it was ordered to be placed before a larger Bench as the construction of the Word 'tenant' in section 19 of the Slum Areas Act was regarded to be of considerable importance. The matter thereafter came up for hearing before Dua C.J., Shankar and Deshpande JJ. and by their order dated March 24, 1969 they directed that it should be heard by a still larger Bench.

The slum Areas Act was amended by the Slum Areas (Improvement and Clearance) Amendment Act, 1964 (Act 43 of 1964). Section 19 of the Act, as it stood before the amendment, read as under:

> "19. (1) notwithstanding anything contained in any other law for the time being in force, no person who has obtained any decree or order for the eviction of a tenant from any building in a slum area shall be entitled to execute such decree or order except with the previous permission in writing of the competent authority.
> (2) Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the competent authority in such form and contained such particulars as may be prescribed.
> (3) On receipt of such application the competent authority, after giving an opportunity to the tenant of being heard and after making such summary inquiry into the circumstances of the case as it deems fit, shall be order in writing either grant such permission or refuse to grant such permission.
> (4) Where the competent authority refuses to grant the permission he shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant."

As a result of the amendment made by Act 43 of 1964, the section reads as under:

> "19 (1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority:-
> (a) institute, after the commencement of the Slum Areas (Improvement and

Clearance) Amendment Act, 1964, any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a Slum Areas.

(b) Where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of a tenant from any building or land in such areas, execute such decree or order.

(2) Every person desiring to obtain the permission referred to in sub-section (2) shall make an application in writing to the competent authority in such form and containing such particulars as may be prescribed.

(3) On receipt of such application, the competent authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit shall by order in writing, either grant or refuse to grant such permission.

(4) In granting or refusing to grant the permission under sub-section (3). The competent authority shall take into account the following factors, namely:-

(a) Whether alternative accommodation within the means of the tenant would be available to him if he were evicted;

(b) Whether the eviction is in the interest of improvement and clearance of the slum areas;

(c) Such other factors, if any as may be prescribed.

(5) Where the competent authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant.

Section 19 of the Slum Areas Act, as it stood before the amendment, barred the execution of a decree or order for eviction of a tenant from property situated in a slum area without permission of the competent authority As a result of the amendment, the protection has been extended to the tenants of such property even against the institution of a suit or proceeding after the amendment. It is, therefore, obvious that after the amendment made by Act 43 of 1964, no suit or other proceeding can be instituted against a tenant of property situated in a slum area without the requisite permission. Where the permission is refused, the question of making a decree or order for eviction and of the execution of the same would not arise because the suit or proceedings would itself be not maintainable. Clause (a) of sub-section (1) of section 19 would act as a bar to the maintainability of such a suit or proceeding, while clause (b) of sub-section (1) of section 19 would remain confined to only those cases wherein decrees or orders for eviction from properties in slum areas were obtained in suit or

proceedings instituted before the amendment made by Act 43 of 1964.

Section 19(1) (a) of the Slum Areas Act would plainly be attracted when a suit or proceeding is instituted for the eviction of a tenant in occupation of property situated in a slum area in cases where no previous order for eviction has been obtained against such a tenant. The question, with which we are concerned in these cases, is whether the above provision would also apply to a suit or proceeding for eviction of a person who was in occupation as tenant or property in a slum area and against whom a decree or order for eviction has been obtained but who has not been evicted from the property in execution of the decree or order. This would depend upon the meaning of the word 'tenant' and upon the answer to the question whether the 'tenant' in section 19 of the Slum Areas Act includes a person against whom an order for eviction has already been obtained. The word "tenant" has not been defined in the Slum Areas Act. The definition, as given in section 2(1) of the Delhi Rent Control Act, reads as under:-

> "(1) 'tenant' means any person by whom or on whose account or behalf the rent of any premises is, or but for a special contract would be, payable and includes a sub-tenant and also any person continuing in possession after the termination of his tenancy but shall not include any person against whom any order or decree for eviction has been made;"

The contention, which has been advanced on behalf of the landlords, is that in the absence of any definition of the word 'tenant' in the Slum Areas Act, the definition, as given in section 2(1) of the Delhi Rent Control Act, holds good for the purpose of section 19 of the Slum Areas Act. As the "tenant", according to the above definition, does not include any person against whom any order or decree for eviction has been made, a suit against such a person, it is urged, would not attract the provisions of section of the Slum Areas Act, considerable reliance has also been placed upon the decision of their Lordships of the Supreme court in the case of *Lakhmi Chand Khemani v. Kauran Devi,* [1.] As the above decision is the sheet-anchor of the arguments advanced on behalf of the landlords, it would be necessary to give the details leading to that decision.

One Mehtab Singh was the owner of a building situate in Gali Rajan, Delhi. Lakhmi Chand Khemani appellant was a tenant under Mehtab Singh in respect of certain accommodation in the building. On June 3, 1955 Mehtab Singh filed a suit under the Delhi and Ajmer Rent Control Act, 1952, against the appellant for his ejectment. The said suit was decreed on October 11, 1956. The appellant filed an appeal against that decree which was dismissed on March 27, 1957. The appellant thereafter moved the

High Court in revision but here also he was unsuccessful. On February 8, 1957 the Slum Areas Act came into force in Delhi by notification under section 3 of that Act. The area, in which the above mentioned building was situate, was declared a slum area Mehtab Singh filed an application under section 19 of the Slum Areas Act for permission to execute the decree but the application was dismissed by the competent authority on September 12, 1957. Appeal filed by Mehtab Singh was rejected by the appellate authority on January 7, 1958. Mehtab Singh sold the building to Kauran Devi respondent on August 21, 1961. On March 28, 1962 the respondent filed a suit against the appellant for possession of the rooms in the latter's occupation. The case of the respondent was that in view of the ejectment decree against the appellant on October 11, 1956, his possession of the rooms was unauthorized and he was a trespasser. In defense the appellant contended that section 19 of the Slum Areas Act barred the suit and also that civil court had no jurisdiction to entertain it in view of section 50 of the Delhi Rent Control Act, 1958. The Subordinate Judge hearing the suit framed the following issues :

(1) Whether the plaintiff is the owner of the premises in suit?
(2) Whether the defendant is in unauthorized occupation of the premises in dispute and is not a tenant in the same ?
(3) Whether the suit is barred under section 19 of the Slum Areas (Clearance and Improvement) Act, 1956.
(4) Whether the civil court has jurisdiction to try this suit ?
(5) Relief.

On the first issue, the Subordinate Judge held that the respondent had proved the ownership of the premises. While dealing with issues 2 and 3; the Subordinate Judge observed that the real question was whether the appellant was a tenant. He referred to the definition of the Word "tenant" in section 2(1) of the Delhi Rent Control Act and observed that the words "order or decree for eviction" in that definition meant an executable decree or order. As the prescribed authority under the Slum Areas Act had refused permission to Mehtab Singh to execute his decree, the decree was held to be not executable. The finding, accordingly, was that the appellant continued to be a tenant under Mehtab Singh, and after the purchase of the property by the respondent he became her tenant. As it was not disputed that if the appellant was a tenant, the civil court had no jurisdiction to entertain the suit in view of section 50 of the Delhi Rent Control Act. The subordinate Judge dismissed the suit for want of jurisdiction. The respondent appealed against the judgment to the High Court. The High Court as per judgment reported in *Shrimati Kauran Devi v. Lakhmi Chand,* [2] held that the

definition of the word "tenant" as given in section 2(1) of the Delhi Rent Control Act applied even though the decree in ejectment had ceased to be executable. Section 50 of the Delhi Rent Control Act was held not to take away the Subordinate Judge's jurisdiction to try the respondent's suit, for the appellant was no longer a tenant after the decree of October 11, 1956 directing his eviction. The appeal of the respondent was allowed by the High Court. The judgment and decree of the subordinate Judge were set aside and the case was remanded back to the trial court for further proceedings in accordance with law.

The appellant went up with special leave to the Supreme Court against the above decision of the High Court. After observing that the only point, which the High Court had decided, was whether the Subordinate Judge had jurisdiction to try the suit, their Lordships dealt with the definition of the word "tenant" as given in section 2(1) of the Delhi Rent Control Act and held that it would not be affected by the Slum Areas Act, Sarkar J., as he then was, who spoke for the court, observed:

> "It is pertinent to observe that notwithstanding this, the latter Act (Act 59 of 1958) excluded from the definition of 'tenant' one who had suffered an ejectment decree. Obviously, the Act of 1958 did not contemplate that the Slum Areas Act would in any way affect the definition of tenant contained in it. No question as to what the rights of a tenant against whom a decree in ejectment has been passed in view of section 19 of the Slum Areas Act are, arises in this appeal the only point being whether he is a tenant within the Act of 1958 so as to oust the jurisdiction of a Civil court to entertain the suit. We think he is not, for section 2(1) of the Act of 1958 must be read by itself and its meaning cannot be affected by any consideration derived from section 19 of the Slum Areas Act".

Section 50 of the Delhi Rent Control Act was held not to bar the suit as the Appellant was found to be not a tenant. In the result the appeal was dismissed.

It would appear from the resume of facts of Lakhmi Chand's case that all that was decided in that was that a person against whom an order for eviction had been made would not be a tenant for the purpose of the Delhi Rent Control Act, and that the definition of the tenant in this respect would not be affected by section 19 of the Slum Areas Act and a suit for possession against such a person would not be barred by section 50 of the Delhi Rent Control Act. No opinion was expressed and their Lordships did not decide the question as to what would be the rights under section 19 of the Slum Areas Act of a person against whom an order of ejectment has been made.

Indeed, their Lordships expressly refrained from expressing any opinion on that point as it was found not to arise in the appeal. This is clear from the following observations:

> "No question as to what the rights of a tenant against whom a decree in ejectment has been passed in view of section 19 of the Slum Areas Act are, arises in this appeal ....

It was further observed:

> "As we have earlier stated, we are not concerned in this appeal with any question as to the protection given by the Slum Areas Act to tenants, nor, as to the result of the application of both the Acts, to a particular case.

The matter with which we are concerned in these cases is not whether a person against whom an order for eviction has been made is a tenant for the purpose of Delhi Rent Control Act, but whether he is a tenant for the purpose of the section 19 of the Slum Areas Act. So far as that question is concerned, the decision of the Supreme Court in Lakhmi Chand's case, in our opinion, can be of no avail to the appellants.

Before parting with Lakhmi Chand's case, we may also deal with the judgments of the High Court in that case both before and after the decision by the Supreme Court, as reference has been made to those judgments on behalf of the landlords. The judgment of the High court, as reported in 1964 PLR 886, shows that the Court expressed no opinion with regard to the meaning of the word "tenant" as used in section 19 of the Slum Areas Act as is apparent from the following observations in Para 9 of the judgment:

> "The word 'tenant', it may be recalled, has not been defined by this Act and we are not called upon to express our opinion on the scope, effect and meaning of this word as used in section 19, as indeed no arguments were addressed on this aspect :-

After remand, the above case of Lakhmi Chand was decreed by the trial court and its decision was affirmed by the first appellate court as well as by the High court. The judgment of the High court is dated December 12, 1968 and its persual shows that the court did not express an opinion on the meaning of the word "tenant" as used in section 19 of the Slum Areas Act. It was merely observed that the question had arisen and had been referred to a larger Bench in Badru Ram v. Ram Chander (i.e., the instant appeal). It would thus follow that the question as to what meaning should be placed upon the word "tenant" in section 19 of the Slum Areas Act is still at large and

has not been decided in Lakhmi Chand's case. The landlords consequently cannot derive any assistance from that judgment.

Coming to the argument advanced on behalf of the landlords that the word "tenant" in section 19 of the Slum Areas Act should have the same meaning as is given in section 2 (1) of the Delhi Rent Control Act and that it should not include a person against whom an order or decree for eviction has been made, we find that there is something inherent in the language of section 19 which militates against the acceptance of the above argument. According to clause (b) of sub-section (1) of section 19, where any decree or order is obtained in any suit or proceeding instituted before the commencement of the Slum Areas (Improvement and Clearance) Amendment Act, 1964, for the eviction of a tenant from any building or land in slum Area, no person shall execute such decree or order except with the previous permission in writing of the competent authority. According to sub-section (2) of that section, a person desiring to obtain permission shall have to apply in writing to the competent authority on the prescribed form. Sub-section (3) provides for the procedure to be followed by the competent authority while granting the permission. Sub Section (4) lays down the criteria which have to be kept in view by the competent authority while granting or refusing to grant the permission. A criterion given in clause (a) of that sub-section is whether alternative accommodation within the means of the tenant would be available to him if he were evicted. The use of the word "tenant" in that clause, which also covers cases mentioned in clause (b) of sub-section (1) makes it manifest that the intention of the legislature was that the tenant would include a person against whom a decree or order for eviction has been obtained. If the word "tenant" were not to include a person against whom a decree or order for eviction has been obtained, the use of the word "tenant" in clause (a) of sub-section (4) would be inexplicable when applying that clause to cases covered by clause (b) of sub-section (1) of section 19. It also cannot be said that the word "tenant" as used in sub-section (1) has a connotation different from that of the word "Tenant" used in sub-section (4) of section 19. It is a well settled rule of construction that where the legislature uses the same expression in the same statute at two places or more than the same interpretation should be given to that expression unless the context requires other wise. (See in this connection *Raghubans Narain Singh v. The Uttar Pradesh Government,*[3] There is nothing in the context of section 19 that the word "tenant" as used in sub-sections (1) and (4) of section 19 was intended to have different meanings.

The matter can also be looked at from another angle. The object of the Delhi Rent

Control Act inter alia is to control evictions. The preamble of the Slum Areas Act shows that it was intended to afford further protection to tenants the living in Slum areas from eviction. An essential object of the Slum Areas Act is to enable the poor, who have no other place to go to, and who, if they were compelled to go out, would necessarily create other slums in the process and live perhaps in less commodious and more unhealthy surroundings than those from which they were evicted, to remain in their dwellings until provision is made for a better life for them elsewhere. See in this connection *Jyoti Pershad v. Union Territory of Delhi,* [4] It was observed in that case:

> "The Act, no doubt, looks at the problem not from the point of view of the landlord his needs the money he has sunk in the house and the possible profit that he might make if the house were either let to other tenants or was reconstructed and let out, but rather from the point of view of the tenants who have no alternative accommodation and who would be stranded in the open if an order for eviction were passed. The Act itself contemplates eviction in cases where on the ground of the house being unfit for human habitation it has to be demolished either single under section 7 or as one of a block of buildings under Chapter IV. So long therefore, as a building can without great detriment to health or safety, permit accommodation, the policy of the enactment would seem to suggest that the Slum dweller should not be evicted unless alternative accommodation could be obtained for him."

To accept the contention advanced on behalf of the landlords and to construe the word "tenant" so as not include a person against whom a decree or order for eviction has been obtained would have the effect of setting at naught the protection afforded to such persons by clause (b) of sub-section (1) of section 19 of the Act. The inevitable consequence of the acceptance of that contention would be that though a landlord cannot evict his tenant in execution of a decree or order for eviction without the permission of the competent authority, he may circumvent the above protection afforded to the tenant by filing a separate suit for possession after obtaining the eviction order or decree. The protection to the tenant would thus become illusory and the provision of law containing such protection would be rendered nugatory. Such a construction, which would necessarily defeat an essential object of the statute, in our opinion, should be avoided. When a question arises about the construction of a word or expression in a statute, the court, should lean in favor of the construction which subseries and effectuates the dominate purpose of the legislation rather than that which has the effect of frustrating and thwarting that purpose. The office of all the Judges is always to make such construction as shall suppress the mischief, and

advance the remedy and to suppress subtle inventions and evasion, for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono public. (see in this connection Maxwell on the Interpretation of Statutes, Twelfth Edition page 40.) it has been observed on page 45 of that book :

> "If the choice is between two interpretations, the harrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result".

It is well settled that in construing the provisions of a statutes courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See in this connection *Siraj-ul-Haq v. S.C. Board of Wakf*[5] In the case of *Satyanarayan Laxminarayan Hegde and others. v. Millikarjan Bhavanappa Tirumala,*[6] the Supreme court while dealing with legislation conferring further protection on the tenants, observed :

> "In interpreting provisions of such beneficial legislation the courts always lean in favor of that interpretation which will further that beneficial purpose of that legislation".

Keeping in view the object and the scheme of section 19 of the Slum Areas Act, as made manifest by its provisions, we are of the opinion that the word "tenant" in that section includes a person in occupation of the tenanted premises even though a decree or order for eviction has been obtained against him.

Reference has been made to some cases wherein the word "tenant" has been held to include an ex-tenant. It is not necessary to refer to those cases as the word "tenant" was constructed in those cases in the context of the statutory provisions mentioned in those cases.

Reference has been made on behalf of the landlords to the case of *Vijendra Nath and others v. Jagdish Rai Aggarwal and others,* [7] Although there was reference to section 19 of the Slum Areas Act in that case, the question, which arose for determination, was whether object or subsequent application was to revive a previous application. It was held that the subsequent application must be regarded as continuation of the proceedings started on the prior application and that the amendment made in section

19 did not affect the pending proceedings. The above case has obviously no bearing on the point which has been referred to the Full Bench.

Another case, upon which reliance has been placed by the landlords, is *C.R. Abrol v. Administrator under the Slum Areas and others,* [8] What was decided in that case was that the competent authority while dealing with an application under section 19 of the Slum Areas Act is bound to make a preliminary inquiry into existence of relationship between the landlord and tenant. No question arose in that case as to what is the connotation of the word "tenant" and the court did not decide this matter. As such, the said case can also be of no help to the landlords.

The instant appeal and the connected cases shall now be posted for hearing and decision in the light of their facts and the question of law decided above. The costs shall abide the event.

Order accordingly.

Cases Referred.

1. AIR 1966 Supreme Court 1003.

2. (1964) 66 P. L. R. 886,

3. AIR 1967 Supreme Court 465

4. AIR 1961 Supreme Court 1602

5. AIR 1959 Supreme Court 198).

6. 1960-1 SCR 890

7. AIR 1967 Supreme Court 600.

8. 1970 RCR 519