GOPI KRISHNA KANORIA

v.

DRAUPADI SAHAYA & ORS.

February 23, 1970

[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Bihar Tenancy Act, 1885, *ss.* 10, 155 *and* 178(1)(*c*)—*Bihar Land Reforms Act*, 1950—*Mokurrari tenure held under registered document prior to Act of* 1885—*On failure to observe conditions of tenure under the instrument notice given for cancellation of tenure and suit filed for ejectment—Bihar Act of* 1950 *vesting tenure in State—Whether claim of proprietor to full compensation lay when his notice of cancellation of tenure did not comply with terms of s.* 155 *of* 1885 *Act—Effect of ss.* 10 *and* 178(1)(c).

The respondents held from the appellant certain land on Mokurrari tenure (permanent lease) created under a registered instrument dated October 29, 1885. According to the said document the proprietor was competent to cancel the lease in the event of a default in the payment of four successive kists by the tenure holder. On the failure of the respondents to pay four successive kists the appellant on June 22, 1953 served on them a notice terminating and cancelling the Mokurrari tenure. During the pendency of the suit which was filed by the appellant in September 1953 it was declared that the Mokurrari tenure became vested in the State of Bihar with effect from July 26, 1954 under the provisions of the Bihar Land Reforms Act, 1950. The plaint was amended and certain parties were added. The appellant claimed that he was entitled to the entire compensation which was to be received from the State. The trial court held that on account of the failure of the appellant to give a notice to the respondents under s. 155 of the Bihar Tenancy Act, 1885 the respondents continued to be the tenure holders till the tenure vested in the State and therefore the appellant was not entitled to the full compensation. The High Court upheld the order of the trial court. In appeal by certificate the appellant relied on s. 10 of the Act which it was claimed made s. 155 inapplicable, in a case like the present, where the contract was made before the Act of 1885.

HELD : Section 10 simply provides that the holder of a permanent tenure shall not be ejected except on the ground that he has broken a condition on breach of which he is liable to be ejected under the terms of the contract. Section 178(1)(c) says categorically that even though the contract has been made before the passing of the Act the landlord cannot eject a tenant otherwise than in accordance with its provisions. Section 155 places a bar against a suit being entertained unless the requirements laid down therein have been satisfied. Therefore even though under s. 10 the appellant became entitled to eject the respondents on account of the breach of the condition relating to payment of rent the condition precedent for a suit being entertained by a court was the notice served in the prescribed manner specifying the breach which was capable of remedy and in which the tenant should have been required to remedy the same or in any case to pay reasonable compensation for the breach. If the tenant had failed to comply within a reasonable time with that request then alone the suit was maintainable. Even if under the proviso to s. 10 the contract which was entered into before the commencement of the Act could contain conditions which were inconsistent with the provisions of the Act that did not dispense with the requirements of s. 155 of the Act

A which had to be satisfied before any suit could be entertained. As the notice which had been served by the appellant did not comply with the provisions of s. 155 the courts below rightly negatived his claim to the entire compensation money. [829 C-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 31 of 1967.

B

Appeal from the judgment and decree dated November 27, 1961 of the Patna High Court in Appeal from Original Decree No. 459 of 1956.

B. Sen and *B. P. Maheshwari,* for the appellant

C *Sarjoo Prasad, U. S. Prasad, Santok Singh* and *U. P. Singh,* for respondent No. 1.

U. P. Singh, for respondent No. 11.

The Judgment of the Court was delivered by

D **Grover, J.** This is an appeal by certificate against a judgment of the Patna High Court in a suit instituted by the appellant for arrears of Mokurrari rent and cess with interest for four kists and for khas possession by evicting the respondents. In the alternative the appellant asked for the payment of compensation money in respect of Mokurrari tenure which had vested in the State of Bihar under the Bihar Land Reforms Act 1950.

E

By means of a registered instrument dated October 29, 1885 the then proprietor of four villages had created a Mokurrari tenure (permanent lease) in favour of Frederick Richard Simson and George Venes. The appellant had acquired the proprietory interest in the villages by purchase and similarly the respondents had acquired the Mokurrari tenure. In the registered instrument there F was a clause that in the event of a default in payment of four successive kists the proprietor would be competent to cancel the Mokurrari patta. The respondents did not pay four successive kists which had become due in June 1952, September 1952, December 1952 and March 1953. On June 22, 1953 the appellant served a notice terminating and cancelling the Mokurrari G tenure in terms of the clause relating to cancellation. During the pendency of the suit which was filed by the appellant in September 1953 it was declared that the Mokurrari tenure became vested in the State of Bihar with effect from July 26, 1954 under the provisions of the Bihar Land Reforms Act 1950. The plaint was amended and certain parties were added.

H

The controversy was mainly confined to the question of payment of compensation. According to the appellant he was entitled to the entire compensation which was to be received from

the State. The respondents maintained that no notice had been given under s. 155 of the Bihar Tenancy Act 1885, hereinafter called the "Act", and, therefore, the appellant could not sue for ejectment. Before the trial court it was admitted that the appellant did not serve a notice as contemplated under s. 155 of the Act. It was, however, contended that section was not applicable. The trial court found that there had been a breach of the covenant relating to payment of rent which had resulted in forfeiture but inasmuch as the appellant did not follow the procedure prescribed by s. 155 the respondents continued to be the tenure-holders till the tenure vested in the State. The appellant was, therefore, not entitled to the entire compensation money including that of the tenure. The High Court upheld the decision of the trial court on the point.

Section 10 of the Act is in the following terms :

> "A holder of a permanent tenure shall not be ejected by his landlord except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected :
>
> Provided that where the contract is made after the commencement of this Act, the condition is not inconsistent with the provisions of this Act."

Section 178(1)(c) provides that nothing in any contract between a landlord and a tenant made before or after the passing of the Act shall entitle a landlord to eject a tenant otherwise than in accordance with the provisions of the Act. Section 155(1) may also be reproduced.

> "A suit for the ejectment of tenant, on the ground—
>
> (a) .....
>
> (b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment,
>
> Shall not be entertained unless the landlords has served, in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request."

It has been contended by Mr. B. Sen for the appellant that by virtue of the proviso to s. 10 the requirement of consistency

A of conditions with the provisions of the Act is limited to contracts made after the commencement of the Act. In the present case the registered instrument was executed before the commencement of the Act. On a true construction of s. 10 and by necessary implication this freedom from the applicability of or consistency with the provisions of the Act is absolute and unqualified and the B effect of the proviso is that any condition imposed by any of the provisions of the Act is excluded whenever there is a case where the contract has been entered into before the commencement of the Act. It has been emphasised that s. 10 is a specific provision relating to permanent tenures and it cannot be restricted or curtailed by the general provisions of s. 178 and s. 155 of the Act. C In this manner the applicability of s. 155 has been sought to be excluded. Now s. 10 simply provides that the holder of a permanent tenure shall not be ejected except on the ground that he has broken a condition on breach of which he is liable to be ejected under the terms of the contract. Section 178(1)(c) says categorically that even though the contract has been made before the passing of the Act the landlord cannot eject a tenant otherwise D than in accordance with its provisions. Section 155 places a bar against a suit being entertained unless the requirements laid down therein have been satisfied. Therefore even though under s. 10 the appellant became entitled to eject the respondents on account of the breach of the condition relating to payment of rent the condition precedent for a suit being entertained by a court was the E notice served in the prescribed manner specifying the breach which was capable of remedy and in which the tenant should have been required to remedy the same or in any case to pay reasonable compensation for the breach. If the tenant had failed to comply within a reasonable time with that request then alone the suit was maintainable. Even if under the proviso to s. 10 the contract F which was entered into before the commencement of the Act could contain conditions which were inconsistent with the provisions of the Act that did not dispense with the requirements of s. 155 of the Act which had to be satisfied before any suit could be entertained. As the notice which had been served by the appellant did not comply with the provisions of s. 155 the courts below rightly negatived his claim to the entire compensation G money.

The appeal fails and is dismissed with costs.

G.C. *Appeal dismissed.*