A NAND KISHORE MARWAH & OTHERS

v.

SMT. SAMUNDRI DEVI

SEPTEMBER 17, 1987

B [SABYASACHI MUKHARJI AND G.L. OZA, JJ.]

Landlord-tenant matter—Provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972—Sections 2, 39, 40—Applicability thereof to the case—Protection granted to the tenants under the Act—Whether available to the tenants in the case.

C **The appellants are the tenants of the disputed property. Respondent-plaintiff's suit for eviction of the appellants was dismissed by the trial court. The High Court in revision set aside the judgment and order of the trial court and decreed the suit for ejectment of the tenants-appellants. The tenants appealed to this Court.**

D **Dismissing the appeal, the Court,**

HELD: Under the provisions of sub-section (2) of Section 2 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, newly-constructed buildings stand exempted from the operation E **of the Act for a period of ten years, which has to be computed from a date to be determined in the manner indicated in Explanation I to section 2(2), which in this case is the date on which first assessment of the premises in dispute was made for house-tax by the Nagar Palika, i.e. October 1, 1976. Provisions of Sections 39 and 40 are of no avail to the appellants as the suit for their eviction was not pending on July 15,** F **1972, when the Act came into force; the suit being filed much later after coming into force of the Act. Provisions of the Act are not applicable to the appellants' case and the protection thereunder granted to the tenants is not available to them. [166G-H; 164C, F]**

In view of the fact that the appellants had been carrying on busi- G **ness in the premises in question for a long time, the decree for eviction directed not to be executed till March 31, 1988, subject to the appellants' filing usual undertaking (within four weeks). [167C-D]**

Om Prakash Gupta, etc. **v.** *Dig Vijendrapal Gupta, etc.*, **[1982] 3 S.C.R. 491 and** *Vineet Kumar* **v.** *Mangal Sain Wadhera*, **[1985] A.I.R.** H **S.C. 817, relied upon by the appellants.**

Firm Amar Nath Basheshar Das **v.** *Tek Chand,* **[1972] 3 S.C.R. 922, relied upon by the respondent.** A

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3909 of 1986.

From the Judgment and Order dated 29.9.1986 of the Allahabad High Court in C.R. No. 83 of 1986. B

Shanker Ghosh and P.K. Jain, for the Appellants.

Y.S. Chitale, Madan Lokur, Prashant Bhushan, Beni Parshad, Rajinder Dhawan and Jitendra Sharma for the Respondents. C

The Judgment of the Court was delivered by

OZA, J. This appeal arises out of a judgment passed by the High Court of Allahabad in Civil Revision No. 83 of 1986 wherein the learned Judge of the High Court allowed the revision petition set aside D the judgment and decree of the Trial Judge and decreed the plaintiff suit for ejectment of the appellant. The disputed property was let out on June 25, 1976. The accommodation was for the first time assessed for house-tax by the Nagar Palika Ghaziabad with effect from October 1, 1976. The suit was filed for eviction after termination of tenancy before the trial court and objection was raised that as the shop and the E basement were separately let out the tenancy could not be terminated by a single notice that would be invalid. The trial court therefore dismissed the suit. The High Court set aside this conclusion of the trial court.

The main ground which was before the High Court was as to F whether the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 ('Act' for short) will be applicable to these proceedings in view of the fact that although the premises were let out in June 1976 but as the assessment was made on October 1, 1976 the provisions of the Act referred to above will not apply for 10 years from October 1, 1976 and therefore the suit could be decreed as G the protection available under this Act will not be available to the tenant.

High Court after discussing various decisions came to the conclusion that in view of the language of Section 2 sub-clause 2 Explanation 1, it could not be doubted that period of 10 years will commence from H

A the date of assessment i.e. October 1, 1976 that it is in that view of the matter that the learned Judge of the High Court decreed the suit and hence the present appeal.

Learned counsel for the appellant contended that apart from the controversy about the date which should be the starting point for B computing the period of 10 years in view of the language of Sections 39 and 40 of the Act, provisions of this Act will be applicable to the present case and therefore a decree for eviction could only be passed. If it could be passed on anyone of the grounds mentioned in Section 20 clause 2 of this Act in support of this contention the learned counsel placed reliance on decisions in *Om Prakash Gupta etc.* v. *Dig Vijendrapal Gupta etc.*, [1982] 3 SCR 491 and *Vineet Kumar* v. *Mangal Sain* C *Wadhera,* [1985] A.I.R. SC 817.

On the other hand learned counsel for the respondent contended that the rights of parties will be governed on the basis of the date on which the suit was filed and it was contended that if on the date on D which the suit was filed by the respondent the provisions of this Act were not applicable then merely because the proceedings have been pending for all these years it could not be contended that as now 10 years elapsed the decree could not be passed. Learned counsel placed reliance on a decision in *Firms Amar Nath Basheshar Dass* v. *Tek Chand*, [1972] 3 SCR 922 and contended that this is a decision of three E Judges' Bench which clearly hold that if the suit was filed within a period of exemption then the suit could be decreed and the provisions of the Act will not be applicable. Learned counsel further contended that in the decision in *Vineet Kumar's case* (supra) on which reliance has been placed by learned counsel for the appellant the *Firms Amar Nath Basheshar Dass's case* (supra) has not been referred to and decision F in *Vineet Kumar's case* (supra) is a judgment by a Bench of two Judges.

It was also contended by learned counsel that as till the matter was pending in the High Court 10 years have not been completed and therefore the High Court passed the decree. Now it could not be contended that as during the pendency of the proceedings in this Court G 10 years have elapsed and therefore the appellant-tenant will be entitled to protection of the provisions of Section 20. It was contended that it is well-settled that if the right to file a suit accrues on the date of filing of the suit then the rights will have to be determined on the basis of the law applicable on the date of the suit and not subsequently.

H Learned counsel for the appellant contended that the decision in

Firms Amar Nath Basheshar Dass's case (supra) will not be applicable to the present case as in that case this Court was considering the language of a notification issued under the East Punjab Act exempting buildings from the operation of the Act for five years and the view taken by this Court in that decision is based on the language of the notification issued whereas in view of the language of Sections 39 and 40 of the Act which is applicable to the present case that view is not possible and it is because of this that in *Vineet Kumar's case* (supra) this Court took the view that if during the pendency of the proceedings 10 years have elapsed the tenant will be entitled to the benefit of the provisions of the Act. It was contended that in this decision the Court was concerned with the provisions of Section 2 of the Act itself.

Before this Court also the only question that was raised on behalf of the parties was as to whether the provisions of the Act will be applicable or not and as to whether the protection granted to the tenants under this Act will be available to the present appallent. Learned counsel for the appellant contended that as during the pendency of this matter in this Court 10 years have elapsed even if the date of completion is taken to be 1.10.76 which is the date on which the first assessment of this property was made and during the pendency of this matter 1.10.86 has been crossed now the period of exemption has come to an end and therefore the appellant is entitled to the benefits thereof. In the alternative it was contended that even if it is held that the rights of parties have to be determined in respect of the date on which the suit was filed still because of the language of Sections 39 and 40 of this Act the appellant-tenant will be entitled to protection under this Act. Sub-clause (2) Sec. 2 of the Act reads as under:

> "(2) Except as provided in sub-section (5) of Section 12, sub-section (1-A) of Section 21, sub-section (2) of Section 84, Sections 24-A, 24-B, 24-C or sub-section (3) of Section 29, nothing in this Act shall apply to a building during a period of ten years from the date on which its construction is completed:
>
> Provided that where any building is constructed substantially out of funds obtained by way of loan or advance from the State Government or the Life Insurance Corporation of India or a bank or a co-operative society or the Uttar Pradesh Avas Evam Vikas Parishad, and the period of repayment of such loan or advance exceeds the aforesaid

A period of ten years then the reference in this sub-section to the period of ten years shall be deemed to be a reference to the period of fifteen years or the period ending with the date of actual repayment of such laon or advance (including interest), whichever is shorter:

B Explanation I-For the purposes of this sub-section,

(a) the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and in the case of a building subject to assessment, the date on which the first assessC ment thereof comes into effect, and where the said dates are different, the earliest of the said dates, and in the absence of any such report, record or assessment, the date on which it is actually occupied (not including occupation merely for the purposes of supervising the construction or D guarding the building under construction) for the first time:

Provided that there may be different dates of completion of construction in respect of different parts of a building which are either designed as separate units or are occupied separately by the landlord and one or more tenants or by E different tenants:

(b)"construction" includes any new construction in place of an existing building which has been wholly or substantially demolished;

F (c) where such substantial addition is made to an existing building that the existing building becomes only a minor part thereof the whole of the building including the existing building shall be deemed to be constructed on the date of completion of the said addition."

G A perusal of this provision will clearly indicate that the new buildings constructed have been exempted from the operation of this Act for a period of 10 years. This period of 10 years have to be computed in the manner from the date as indicated in Explanation 1 and it was contended by learned counsel for the respondents that it will be the date on which the first assessment was made and so far as this question is H concerned, it is also concluded by a decision of this Court in *Om*

Prakash Gupta's case (supra) where it has been clearly held while interpreting Sec. 2 Explanation 1 of this Act that if there is an assessment made then the date of completion of the building, the date from which 10 years are to be computed will be the date on which the first assessment was made. In this view of the matter therefore it is clear that 10 years have to be computed from 1.10.76, and it is because of this that even the learned counsel for the appellant did not seriously contend that the 10 years commence from 1.10.76.

It is true that the decision reported in *Firms Amar Nath Basheshar Dass's case* (supra) is a decision on the Punjab Act where the question before this Court was about the language of the notification which was issued under the Act exempting the buildings from operation of the Act for a period of 5 years and it is true that the language of the notification was not identical with the language of Sec. 2 sub-clause 2 quoted above.

But apart from it the contention advanced by the learned counsel for the appellant was that because of the language of Section 39 and 40 even if the matter is pending in this Court and 10 years have elapsed, appellant will be entitled to the benefit of the provisions of this Act because according to him the appeal will be a continuation of the suit and therefore the advantage will be available. It is no doubt true that the appeal is the continuation of the suit and if within the language of Section 39 the appellant is entitled to the advantage of the Section even if the matter is pending in this Court the protection will be available to the appellant but looking to the language of Section 39 it appears that the contention of the learned counsel could not be accepted.

> "39. Pending suits for eviction relating to buildings brought under regulation for the first time—In any suit for eviction of a tenant from any building to which the old Act did not apply, pending on the date of commencement of this Act, where the tenant within one month from such date of commencement or from the date of his knowledge of the pendency of the suit, whichever be later, deposits in the court before which the suit is pending, the entire amount of rent and damages for use and occupation (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine cent per annum and the landlord's full cost of the suit, no decree for eviction shall be passed except on any of the grounds

A mentioned in the proviso to sub-section (1) or in clauses (b) to (g) of sub-section (2) of Section 20, and the parties shall be entitled to make necessary amendment in their pleadings and to adduce additional evidence where necessary:

Provided that a tenant the rent payable by whom does not B exceed twenty-five rupees per month need not deposit any interest as aforesaid:"

It is pertinent to note that this Section applies to those suits which were pending on the date of the commencement of this Act. Admittedly this Act came into force on 15th July, 1972 and therefore if the suit was pending on that date it is only then that the provisions of C Section 39 will come to the assistance of the tenant-appellant. Admittedly this suit was not pending on the date on which this Act came into force. An attempt was made to contend that so far as the present property is concerned the Act will be deemed to have come into force on the expiry of 10 years i.e. 1.10.86 but this contention could not be D accepted as it is very clear from the language of this Act that it applied only to a suit pending on the date of the commencement of this Act and this is the view taken in the *Om Prakash Gupta's case* wherein it was observed:

"Further, in order to attract section 39 the suit must be E pending on the date of commencement of the Act which is 15th of July, 1972 but the suit giving rise to the present appeal was filed on 23rd of March, 1974 long after the commencement of the Act. There is yet another reason why section 39 will have no application to the present case."

F

It is therefore clear that so far as the present appeal is concerned, the provisions of Section 39 will be of no avail. Section 40 of the Act reads as under:

"40. Pending appeals or revisions in suits for eviction G relating to buildings brought under regulation for the first time—Where an appeal or revision arising out of a suit for eviction of a tenant from any building to which the old Act did not apply is pending on the date of commencement of this Act, it shall be disposed of in accordance with the provisions of Section 39, which shall mutatis mutandis H apply."

This Section talks of the pendency of a revision or an appeal arising out of a suit pending on the day on which this Act came into force. It is clear that provisions of Section 40 will come to the rescue of the appellant-tenant only if the suit from which revision or appeal arose was pending on the date of commencement of this Act i.e. 15.7.1972 and therefore it could not be contended that the present revision petition or the appeal either to the High Court or the appellate authority arose out of suit which was pending on the date on which this Act came into force. Admittedly the suit itself was filed much after the coming into force of this Act. In this view of the matter therefore, in our opinion, even this contention of learned counsel for the appellant could not be accepted.

It is well-settled that the rights of the parties will be determined on the basis of the rights available to them on the date of the suit, but in *Vineet Kumar's case* (supra) this Court took the view that if during the pendency of the proceedings 10 years have elapsed the tenant is entitled to the protection under the Act and in coming to this conclusion the Court also considered the language of Section 39 of the Act and it observed:

> "The appellant in the present case only seeks the protection of the new Rent Act which became applicable to the premises in question during the pendency of the litigation. We see no reason why the benefit of the new Rent Act be not given to the appellant. Section 20 of the new Rent Act provides a bar to a suit for eviction of a tenant except on the specified grounds as provided in the section. Subsection (4) of S. 20 stipulated that in any suit for eviction on the grounds mentioned in Cl. (a) to sub-s. (2) viz. the arrears of rent, if at the first hearing of the suit the tenant in default pays all arrears of rent to the landlord or deposits in court the entire amount of rent and damages for the use and occupation of the building due from him, such damages for use and occupation being calculated at the same rate as rent together with interest thereon at the rate of nine per cent per annum and the landlord's cost of the suit in respect thereof after deducting therefrom any amount already deposited by the tenant under sub-s. (1) of S. 30, the court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground. Section 39 and 40 of the new Rent Act also indicate that the benefit of new Act will be given

A to the tenant if the conditions contemplated in those sections are satisfied. Section 39 also indicates that the parties are entitled to make necessary amendment in their pleadings and to adduce additional evidence where necessary."

But unfortunately attention of the Court was not drawn to the *Om* B *Prakash Gupta's case* (supra) which specifically considered this Act and the language of Section 39 in particular and is a decision of a Bench of three Judges which is binding on us.

The restriction on the right of a landlord to evict a tenant has been provided for in this Act under Section 20 and the language of C Section 20 is also significant.

"20. Bar of suit for eviction of tenant except on specified grounds—(1) Save as provided in sub-section (2) no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by D efflux of time or on the expiration of a notice to quit or in any other manner:

Provided that nothing in this sub-section shall bar a suit for the eviction of a tenant on the determination of his tenancy by efflux of time where the tenancy for a fixed term was E entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceedings, which is either recorded in court or otherwise reduced to writing and signed by the tenant."

This is put in Chapter IV with the heading "Regulation and Eviction" F and the section starts with title which is printed in bold "Bar of suit for eviction of tenant except on specified grounds" and again in the wording of the section itself it provides: "No suit shall be instituted for eviction." This clearly indicates that the restriction put under Section 20 is to the institution of the suit itself and therefore it is clear that if the provisions of this Act applies then no suit for eviction can be G instituted except on the grounds specified in the sub-sections of this Section. Keeping in view the language of this Section if we examine the provisions contained in sub-section (2) of Section 2 it will be clear that for a newly constructed building the provisions of this Act will not apply for 10 years and therefore so far as the restriction under Section 20 is concerned they will not apply and therefore it is clear that within H 10 years as provided for in clause (2) of Section 2 restriction of the

institution of suit as provided for in Section 20 clause (1) quoted above will not be applicable and it is thus clear that during the pendency of the litigation even of 10 years expired the restriction will not be attracted as the suit has been instituted within 10 years and therefore restriction as provided for in Section 20 can not be attracted. A

In the light of the discussions above therefore, in our opinion, the contention advanced by learned counsel for the appellant can not be accepted. The appellant-tenant could not be given the advantage of the provisions contained in this Act. In this view of the matter therefore the appeal is without any substance and is dismissed. B

It is true that we maintained the decree for eviction passed by the High Court but in view of the fact that as the appellant has been carrying out the business in the premises for a long time for it would be proper to permit the appellant time to make their arrangements for shifting. We therefore direct that the decree for eviction shall not be executed upto 31st March, 1988 on the appellant filing a usual undertaking within four weeks. In default the respondent shall be entitled to execute the decree forthwith. In the circumstances of the case parties are directed to bear their own costs. C D

S.L. Appeal dismissed.