

## Sunder Dass vs Ram Prakash on 24 February, 1977

Equivalent citations: 1977 AIR 1201, 1977 SCR (3) 60

**Author: P.N. Bhagwati**

**Bench: P.N. Bhagwati, Syed Murtaza Fazalali**

PETITIONER:

SUNDER DASS

Vs.

RESPONDENT:

RAM PRAKASH

DATE OF JUDGMENT 24/02/1977

BENCH:

BHAGWATI, P.N.

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BHAGWATI, P.N.

FAZALALI, SYED MURTAZA

CITATION:

1977 AIR 1201

1977 SCR (3) 60

1977 SCC (2) 662

ACT:

Delhi Rent Control Act. 1958--Sec. 3--proviso--Interpretation of statutes ---Introduction of proviso with retrospective effect--Whether decree passed earlier becomes a nullity--Legal fiction--Whether to be carried to logical conclusion.

HEADNOTE:

The appellant purchased in a public auction a building which was evacuee property. Before the sale certificate was made out in favour of the appellant, the possession of the building was handed over to him. He in turn let out a shop in the said building to the respondent. The appellant filed a suit for eviction in the Civil Court against the respondent. The Civil Court passed a decree for eviction and negatived the contention of the respondent that the Delhi Rent Control Act, 1958 was inapplicable and, therefore, the jurisdiction of the Civil Court was barred. The Court relied on section 3 of the Delhi Rent Control Act which provides that nothing in the Act shall apply to any premises

belonging to the Government. The decree for eviction was confirmed by the Appellate Court and then by the High Court in Second Appeal. Before the decree could be executed section 3 was amended by adding a proviso with retrospective effect, which provided that where any premises belonging to Government have been lawfully let out by any person, then notwithstanding any judgment, decree or order of any court the provisions of the Act would apply to the tenancy. The Executing Court held that it was not competent to it to go into the question whether the decree was rendered nullity on the ground that the jurisdiction of the Civil Court was ousted by the introduction of the provision 3 with retrospective effect since the decree had become final between the parties. The Appellate Court upheld the said decision. The High Court in Second Appeal reversed the decision of the two courts below and held that the decree was a nullity and could not be executed. Dismissing the appeal this Court,

HELD : (1) An executing court cannot go behind the decree nor can it question its legality or correctness but where a decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. [64C-D]

Vide Kiran Singh v. Chaman Paswan [1955] 1 SCR 177 and Seth Hiralal Patni v. Sri Kali Nath, [1962] 2 SCR 747, followed.

(2)-Since the proviso was introduced with retrospective effect it must be deemed to be part of section 3 since the time the Rent Control Act was enacted. [65-D]

East End Dwellings Co. Ltd. v. Finsbury Borough Council [1952] A.C. 132, approved.

As a result of the fiction the proviso must be deemed to be part of section 3 from the date of enactment of the Act. The logical and inevitable consequence of the introduction of the provision 3 with retrospective effect would be to read the proviso as if it were part of the section at the date when the Act was enacted, and the legal fiction created by the retrospective operation must be carried to its logical extent and all the consequences and incidents must be worked out as if the proviso forms part of the section right from the beginning. The phrase "notwithstanding any judgment; decree or order of any court" in the proviso makes it clear that the legislature intended that the finality of the judgment, decree etc., should not stand in the way of giving full effect to the retrospective operation of the provision 3. [66C-G]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2006 of 1968.

(From the Judgment and Decree dated 26-11-1961 of the Punjab High Court Circuit Bench at Delhi in Execution Second Appeal No. 158-D of 1964).

Bishan Narain and D.N. Mishra, for the appellant. V.S. Desai, B.P. Singh and A.K. Srivastava, for the respondent.

The Judgment of the Court was delivered by BHAGWATI, J.--This appeal by certificate raises a short but interesting question of law relating to the interpretation and effect of the proviso to section 3 of the Delhi Rent Control Act, 1958. The dispute in this appeal relates to a shop situate on the ground floor of a building bearing Municipal No. 624-36 (Old) 530-35 (New) situate in Sadar Bazar, Delhi. The building was an evacuee property and it was acquired by the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and formed part of the compensation pool. It was sold by public auction and the appellant being the highest bidder was accepted as the auction purchaser by the managing officer on 5th September, 1955. It does not appear from the record as to when the appellant paid the full purchase price to the managing officer but presumably he did so before 23rd September, 1955 when the sale was confirmed in his favour by the managing officer. The sale certificate was not issued in favour of the appellant for a considerable time and we are told that even until now it has not been issued, but possession of the building was handed over to the appellant on 30th August, 1956 and a letter dated 3rd September, 1956 was addressed by the managing officer to the respondent intimating to him that since possession of the building had been handed over to the appellant, the respondent should pay rent to the appellant and otherwise deal directly with him with effect from 30th August, 1956. This letter was addressed to the respondent, because at that time the respondent was in possession of one other shop in the same building as a tenant and pursuant to this letter, he attorned tenancy in respect of that shop to the appellant. On 1st September, 1956, the appellant let out the shop in dispute thereafter referred to as the premises to the respondent and the latter continued in possession of the premises as a monthly tenant. However, on 10th August, 1959 the appellant gave a notice to quit terminating the tenancy of the respondent and calling upon him to hand over vacant possession of the premises by the mid-night of 31st August, 1959. The respondent declined to comply with the requisition contained in the notice and hence the appellant filed a suit in the Court of the Senior Subordinate Judge, Delhi on 15th September, 1959 for recovery of possession of the premises from the respondent. There was also a claim made in the suit for recovery of arrears of rent but this claim is no longer material and we need not dwell on it. The respondent resisted the claim for eviction inter alia on the ground that the certificate of sale not having been issued in favour of the appellant, he was not the owner of the premises and hence he was not legally competent to let out the premises to the respondent nor was he entitled to recover possession of the premises, from the respondent. The respondent also disputed the jurisdiction of the court on the ground that the Delhi Rent Control Act, 1958 which had come into force on 9th February, 1959 was applicable to the tenancy of the premises and by reason of section 50 of that Act, the civil court had no jurisdiction to entertain the suit. The Trial Court took the view, on a reading of the decision of this Court in *M/s Bombay Salt and Chemical Industries v. L.J. Johnson*, (1) that since the certificate of sale was not issued in favour of the appellant, he had not become the owner of the premises and the premises continued to belong to the Government and by reason of section 3 which provided that "Nothing in this Act shall apply to any premises belonging to the Government", the Delhi Rent Control Act,

1958 was not applicable to the tenancy in respect of the premises and the civil court had jurisdiction to entertain the suit. The Trial Court' also. held that since the full purchase price had been paid by the appellant and possession of the premises had been handed over by the managing officer to the appellant on 30th August, 1956, the appellant was legally competent to let out the premises to the respondent and the premises having been lawfully let out by the appellant to the respondent, there was relationship of landlord and tenant between the parties and since the 'tenancy was validly terminated by the appellant by giving notice to. quit in accordance with the provisions of section 106 of the Transfer of Property Act, the appellant was entitled to recover possession of the premises from the respondent. A decree for eviction was accordingly passed by the Trial Court in favour of the appellant. The respondent preferred an appeal but the appeal was dismissed' by the Additional District Judge, Delhi on substantially the same view as that taken by the Trial Court. This was followed by a second appeal to the High Court but that appeal also met with the same fate and the decree for eviction became final between the parties.

Now, before the decree for eviction could be executed, an amendment was made in section 3 of the Delhi Rent Control Act, 1958 which is very material. We shall immediately refer to, this amendment, but before we do so, it would be convenient to advert too, few relevant provisions, of the Delhi Rent Control Act, 1958. This Act came into force with effect from 9th February, 1959 and it was intended to provide inter alia for control of rents and evictions. Section 14, sub-section (1) granted protection to the tenant against eviction by providing that notwithstanding anything contained in any other law or contract, no order or decree for recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant, but the proviso. to this sub-section laid down certain grounds on which the Controller could, on an application made to him in the prescribed manner, make an order for recovery of possession of the premises. Since the jurisdiction to make (1) A.I.R. 1958 S.C. 289.

an order for recovery of possession of premises on one or more of the specified grounds was given to the Controller under section 14, subsection (1), section 50 ousted the jurisdiction of the civil court by declaring that, save as otherwise expressly provided in the Act, no civil court shall entertain any suit or proceeding in so far as it relates inter alia to eviction of any tenant from any premises to which the Act applies or to any other matter which the Controller is empowered by or under the Act to decide. If, therefore, the premises in the present case were premises to which the Act applied, the civil court would have no jurisdiction to entertain the suit filed by the appellant for recovery of possession of the premises from the respondent. But section 3, as it stood prior to its amendment, by Act 4 of 1963, provided that nothing in the Act shall apply to any premises belonging to the Government. The view taken by the Trial Court and affirmed by the Additional District Judge and the High Court was that since the certificate of sale was not issued in favour of the appellant, the premises continued 'to belong to the Government and on this view, the Act clearly did not apply to the premises and neither section 14, sub-section (1) nor section 50 being applicable, the civil court continued to have jurisdiction to entertain the suit. This was the reason why the decree for eviction was passed by the Trial Court against the respondent and it was affirmed by the Additional District Judge and the High Court. But by the time the decree for eviction came to be executed, the following proviso was added in section 3 by Act 4 -of 1963 with retrospective effect:

"Provided that where any premises belonging to Government have been or are lawfully let by any person by virtue of an agreement with the Government or otherwise, then, notwithstanding any judgment, decree or order of any court or other authority, the provisions of this Act shall apply to such tenancy."

The effect of the addition of the proviso with retrospective effect was as if the proviso had always been there right from the time when the Act was enacted. Therefore, when an application was filed by the appellant for execution of the decree for eviction against the respondent on 31st August, 1963, an objection was raised on behalf of the respondent that by reason of the retrospective introduction of the proviso in section 3, the decree for eviction was rendered null and void as a decree passed by a court without jurisdiction and hence it was not executable against the respondent. This objection was negatived by the executing court on the ground that that was not an objection which could be entertained in execution and the executing court must proceed to execute the decree which had become final between the parties. The respondent preferred an appeal but the first appellate court took the view that, on the facts of the case, the proviso to section 3 was not attracted and hence the decree for eviction could not be said to be one passed by a court without jurisdiction and on this view, it upheld the order of the executing court and rejected the appeal. This led to the filing of a further appeal and in this appeal the High Court held 'that since the certificate of sale was not issued in favour of the appellant, the building continued to belong to the Government but the appellant having paid the full purchase price of the building and the sale of the building in favour of the appellant having been confirmed and possession having been handed over to him in pursuance of the sale, the appellant was legally competent to let out the premises to the respondent and the letting of the premises by the appellant in favour of the respondent on 1st September, 1956 was lawful and hence the condition for the applicability of the proviso to section 3 was satisfied, and since the proviso was introduced in section 3 with retrospective effect, it must be held that the Act was applicable to the premises at the date of the institution of the suit and consequently the civil court had no jurisdiction to entertain the suit and in that view, the decree for eviction was a nullity. The High Court accordingly allowed the appeal and held that the decree for eviction being null and void could not be executed against the respondent. This view taken by the High Court is challenged in the present appeal preferred by special leave obtained from this Court. Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void by any court in which it is presented. Its nullity can be set up whenever and whenever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all. Vide *Kiran Singh v. Chaman Paswan*(1) and *Seth Hiralal Patni v. Sri Kali-Nath*.(2) It is, therefore, obvious that in the present case, it was competent to the executing court to examine whether the decree for eviction was a nullity on the ground that the civil court had no inherent jurisdiction to entertain the suit in which the decree for eviction was passed. If the decree for

eviction was a nullity, the executing court could declare it to be such and decline to execute it against the respondent.

The position which obtained when the suit for eviction was instituted by the appellant against the respondent was that section 3, as it stood prior to its amendment by Act 4 of 1963, was in force and that excluded the applicability of the Delhi Rent Control Act, 1958 to premises belonging to the Government. The premises in the present case, were vested in the Government under section 12 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 and they were sold by public auction to the appellant and though full purchase price (1) [1955] 1 S.C.R. 117. (2) [1962] 2 S.C.R. 747.

was paid by the appellant and the sale was confirmed in his favor and possession was also handed over to him, the certificate of sale was, for some inexplicable reason, not issued in his favour. The Trial Court, therefore, took the view, and this view was affirmed by the Additional District Judge as well as the High Court, that the appellant did not become the owner of the premises and they continued to belong to the Government and for this reason, it was held that the Delhi Rent Control Act, 1958 did not apply to the premises and the civil court had jurisdiction to entertain the suit for eviction. The Trial Court also found, and this finding too was accepted by the Additional District Judge as well as the High Court, that though the certificate of sale was not issued in his favour, the appellant was competent to let out the premises and the letting of the premises by him in favour of the respondent on 1st September, 1956 was lawful and since the tenancy of the respondent was validly terminated by the appellant by giving notice to quit, the appellant was entitled to a decree for eviction against the respondent. But, as pointed out above, section 3 was amended with retrospective effect by the introduction of the proviso and the question is whether the introduction of the proviso with retrospective effect had the effect of rendering the decree for eviction null and void.

Since the proviso was introduced with retrospective effect, it must be deemed to be part of section 3 since the time that the Delhi Rent Control Act, 1958 was enacted. It was pointed out by Lord Asquith of Bishopstone in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* (1) in a passage which has become classical by reason of its felicity of language that "if you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of those in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs". The proviso must, therefore, for all legal purposes, be deemed to have been included in section 3 as from the date of enactment of the Delhi Rent Control Act, 1958. If that be the true position, then obviously it must be held that the provisions of the Delhi Rent Control Act, 1958 were applicable to the tenancy of the respondent, for the premises though belonging to the Government, were lawfully let out by the appellant to the respondent and the condition of the proviso was satisfied. That was the position which, by reason of the legal fiction brought about by the retrospective introduction of the proviso in section 3, must be held to have prevailed at the date of the institution of the suit and the provisions of the Delhi Rent Control

Act, 1958 being applicable, it must be concluded that the civil court had no inherent jurisdiction to entertain the suit (vide section 50) and the decree for eviction was a nullity. Prima facie, it may appear somewhat strange that a decree for eviction which was good and valid when it was made should be treated as null and void by "(1) [1952] A.C. 132.

virtue-of the retrospective introduction of the proviso in section 3. But such a result is necessarily involved in the legal fiction created by the retrospective operation of the proviso. If, as a result of the said fiction, we must read the proviso as forming part of section 3 as from the date of enactment of the Delhi Rent Control Act, 1958, the conclusion is inescapable that the civil court had no inherent jurisdiction to entertain the suit and the Trial Court as well as the Additional District Judge and the High Court were in error in exercising jurisdiction in relation to the suit when their Jurisdiction was clearly excluded by section

50. The appellant, however, urged that the introduction of the proviso in section 3 should not be given greater retrospective operation than necessary and it should not be so construed as to affect decrees for eviction which had already become final between the parties. Now, it is true, and that is a settled principle of construction, that the court ought not to give a larger retrospective operation to a statutory provision than what can plainly be seen to have been meant by the legislature. This rule of interpretation is hallowed by time and sanctified by decisions, though we are not at all sure whether it should have validity in the context of changed social norms and values. But even so, we do not see how the retrospective introduction of the proviso in section 3 can be construed so as to leave unimpaired a decree for eviction already passed, when the question arises in execution whether it is a nullity. The logical and inevitable consequence of the introduction of the proviso in section 3 with retrospective effect would be to read the proviso as if it were part of the section at the date when the Delhi Rent Control Act, 1958 was enacted and the legal fiction created by the retrospective operation must be carried to its logical extent and all the consequences and incidents must be worked out as if the proviso formed part of the section right from the beginning. This would clearly render the decree for eviction a nullity and since in execution proceeding, an objection as to nullity of a decree can always be raised and the executing court can examine whether the decree is a nullity, the principle of finality of the decree cannot be invoked by the appellant to avoid the consequences and incidents flowing from the retrospective introduction of the proviso in section 3. Moreover the words notwithstanding any Judgment, decree or order of any court or or other authority in the proviso make it clear and leave no doubt that the legislature intended that the finality of "judgment, decree or order of any court or other authority" should not stand in the way of giving full effect to the retrospective introduction of the proviso in section 3 and applying the provisions of the Delhi Rent Control Act, 1958 in cases falling in the proviso.

We are therefore, of the view that the High Court was right in taking the view that by reason of the introduction of the proviso in section 3 with retrospective effect the decree for eviction was a nullity and the executing court was justified in declining to execute it against the respondent.

We accordingly dismiss the appeal with costs throughout but order and direct the respondent to pay to the appellant all the arrears of rent in respect of the premises which remain to be paid by him to the appellant in the following installments: Rs. 2,000/- on or before 30th April, 1977; and out of the

balance a further sum of Rs. 2,000 within three months thereafter and the balance, if any, by 31st October, 1977. The respondent through his counsel under- takes to make payment of the arrears in the manner afore- said.

P.H.P.  
dismissed.

Appeal