

Anupama Sen Gupta And Ors. vs Deb Kumar Sen Sarma And Ors. on 22 September, 1981

Equivalent citations: AIR1982SC25A, 1981(3)SCALE1472, (1981)4SCC544, 1981(13)UJ779(SC), AIR 1982 SUPREME COURT 25, 1981 UJ (SC) 779, (1982) 1 RENCJ 654, (1982) 1 RENC R 188, (1982) 1 RENTLR 87, 1981 (4) SCC 544

Author: E.S. Venkataramiah

Bench: R.S. Pathak, E.S. Venkataramiah, V. Balakrishnan Eradi

JUDGMENT

E.S. Venkataramiah, J.

1. These three appeals by special leave are directed against a common judgment and order dated August 27, 1980 of the Calcutta High Court in three Civil Rules Nos. 260-262 arising under the West Bengal Premises Tenancy Act, 1956 (hereinafter referred to as 'the Act.').

2. The first respondent in each of these appeals is Deb Kumar Sen Sarma. He was working as a Sub-Inspector of Police, Calcutta in the year, 1977 and was residing in a Government building being flat No. 8, on the third floor of premises No. 20A, Lower Range. The Deputy Commissioner of Police, Headquarters, Calcutta issued a notice to him to vacate the above mentioned flat forthwith as he owned a residential building in the name of his wife bearing No. 22/E, Lower Range, Calcutta-17 which was in the occupation of tenants, the appellants herein and another person by name Ahmed Hussain Molla. The appellants in each of these cases and the said Ahmed Hussain Molla were occupying under separate leases different portions of the building bearing No. 22/E, Lower Range, Calcutta-17 which was standing in the name of Sudha Rani Sen Sarma, wife of the first respondent. On receipt of the notice asking him to vacate the Government quarters, the first respondent got notices issued on September 7, 1977 in the name of his wife, Sudha Rani to the tenants referred to above asking them to vacate the premises in accordance with Section 13(6) read with Section 29B of the Act. Sudha Rani died on September 27, 1977 and on the tenants not vacating the premises in question, the first respondent alongwith his son and five daughters (who were the heirs of Sudha Rani alongwith the first respondent) filed on November 24, 1977 four petitions before the Rent Controller at Calcutta in R.C. Cases Nos. 10, 11, 12 and 13 of 1977 under Section 29B of the Act, which prescribed a special procedure which enabled a Government official who was asked to vacate a residential accommodation provided by the Government on the ground that he owned a residential accommodation either in his name or in the name of his wife or dependent child at or near the place where he was posted for the time being to recover possession of any premises on the ground specified in Clause (ff) of Sub-section (1) of 25 Section 13 of the Act. The relevant part of

Section 29-B of the Act reads thus:

29-B. (1) No Civil Court shall entertain any application by a landlord being a Government employee, and who being in occupation of any residential premises allotted to him by his employer, is required by, or in pursuance of, an order made by such employer to vacate such residential accommodation, or in default, to incur certain obligations on the ground that he owns a residential accommodation either in his own name or in the name of his wife or dependent child at or near the place where he is posted for the time being, for the recovery of possession of any premises on the ground specified in Clause (ff) of Sub-section (1) of Section 13 but such application shall be dealt with by the Controller in accordance with the procedure specified in this section.

(2) Whenever any application is filed before the Controller by a landlord referred to in Sub-section (1) for the recovery of possession of any premises on the ground specified in Clause (ff) of Sub-section (1) of Section 13, the Controller shall issue summons, in the form specified in the Second Schedule....

(7) The provisions of Sub-sections, (2), (3), (4) and (6) of Section 13 shall, so far as may be, apply to a proceeding under this Chapter but nothing contained in Sub-section (3A) of Section 13 shall apply to such a proceeding.

(8) The Controller shall, while holding an inquiry in a proceeding to which this Chapter applies, follow the practice and procedure of a Court of Small Causes, including the recording of evidence.

(9) No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this Section :

Provided that the High Court may, for the purpose, of satisfying itself that an order made by the Controller under this section is according to law, call for the case and pass such order in respect thereto as it thinks fit....

3. Clause (ff) of Sub-section (J) and Sub-section (6) of Section 13 of the Act which are relevant for purposes of these appeals read as follows :

13. Protection of tenant against eviction-(1) Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the following grounds, namely :...

(ff) subject to the provisions of Sub-section (3A), where the premises are reasonably required by the landlord for his own occupation if he is the owner or for the occupation of any person for whose

benefit the premises are held and the landlord or such person is not in possession of any reasonably suitable accommodation....

(6) Notwithstanding anything in any other law for the time being in force, no suit or proceeding for the recovery of possession of any premises on any of the grounds mentioned in Sub-section (1) except the grounds mentioned in Clauses (i) and (k) of that Subsection shall be filed by the landlord unless he has given to the tenant one month's notice expiring with a month of the tenancy.

4. The appellants resisted the petitioners inter alia on the following grounds: -(a) that the building in question did not belong to the first respondent and hence the proceedings were not maintainable; (b) that the notice under Section 13(6) of the Act having been issued in the name of Sudha Rani, there was no valid termination of the tenancy; (c) that the respondent other than the first respondent who were cosharers and who were not Government servants could not avail themselves of the special procedure prescribed under Section 29B of the Act; (d) that the petitions filed before the Rent Controller did not contain necessary allegations; and (e) that in any event as the first respondent herein had retired from Government service during the pendency of the petitions, no relief could be granted to him under Section 29B. The appellants in two of the above appeals also contended that the portions of the building in their possession were being used for non-residential purposes and therefore Section 29B was not applicable to them.

5. The tenant involved in R.C. Case No. 13, Ahmed Hussain Molla also raised a plea that the accommodation in his possession was non-residential in character. The Rent Controller accepting this part of his case dismissed the petition R.C. No. 13/77. We are not concerned in these appeals with his case. He, however, rejected the contentions of the appellants, who were tenants involved in R.C. Cases Nos. 10,11 and 12 of 1977 and ordered their eviction. Aggrieved by the order of the Rent Controller the appellants filed three revision petitions before the Calcutta High Court which as stated above were dismissed by a common judgment dated August 27, 1980. These appeals are preferred against the said judgment.

6. Chapter VIA of the Act was inserted by West Bengal Act 52 of 1976 to provide a special machinery for enabling an employee of the Central or State Government or any local authority, who being in occupation of any residential premises allotted to him by his employer, was required by such employer to vacate such residential accommodation or in default, to incur certain obligations on the ground that he owned a residential accommodation either in his own name or in the name of his wife or dependent child at or near the place where he was posted for the time being to recover possession of any premises on the ground specified in Clause (ff) of Sub-section (1) of Section 13 of the Act. This new Chapter appears to furnish almost a complete code for that purpose. It contains only two Sections viz. Section 29A and Section 29B. Section 29A of the Act which contains a non-obstante clause states that the provisions of Chapter VIA or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in the Act or in any other law for the time being in force. Sub-section (1) of Section 29B which is the other provision contained in Chapter VIA of the Act excludes the jurisdiction of ordinary civil courts to deal with cases referred to therein and vests it in the Controller appointed under Chapter v. of the Act. Sub-sections (2) to (8) of Section 29B of the Act lay down the special procedure which is almost

summary in character for the disposal of applications made by Government employees in the circumstances set out in Sub-section (I) for the recovery of possession of any premises on the grounds set out in Clause (ff) of Sub-section (1) of Section 13 of the Act. The tenant or the Sub-tenants to whom notices are issued by the Controller cannot contest the application for eviction without obtaining the leave of the Controller which can be granted in accordance with Sub-section (5) of Section 29B. But Sub-section (7) of Section 29B of the Act, the provisions of Sub-sections (2), (3), (4) and (6) of Section 13 so far as may be, are made applicable to proceedings before the Controller but Sub-section (3A) of Section 13 of the Act is, however, excluded from operation in such cases. Sub-section (9) of Section 29B of the Act makes the order of the Controller final subject only to the power of the High Court under the proviso to that Sub-section, by which the High Court may, for the purpose of satisfying itself that an order made by the Controller under Section 29B is according to law call for the case and pass such order in respect thereto as it thinks fit. Sub-section (10) of Section 29B confers a power of review on the Controller where no application is filed before the High Court under the proviso to Sub-section (9) of Section 29B. Sub-section (11) of Section 29B provides for the framing of rules governing the execution of an order made by the Controller under Section 29B. The Explanation appearing at the end of that section states that for purposes of Chapter VIA of the Act, the expression 'landlord being a Government employee' includes an employee of the Central or State Government or any local authority.

7. The first question which arises for consideration in these appeals is whether the first respondent was entitled to get possession of the premises in question under Section 29B of the Act at all. This contention is raised by the appellants on the ground that the premises in question which stood in the name of his wife actually belonged to her and that Section 29B was applicable only to cases where the residential accommodation in question truly belongs to the Government employee and is standing in his own name or nominally in the name of his wife or dependent child. It is urged on behalf of the appellants that since the finding of the High Court is that the premises in question belonged to the wife of the first respondent, the eviction petitions filed were liable to be dismissed. On the other hand it is urged on behalf of the respondents that the question of title to the property in question is foreign to the scope of a proceeding before a Controller who has to dispose of the matter in a summary way and that the Government employee acquires a right to resort to Chapter VI of the Act by mere service of a notice on him by his employer requiring him to vacate any residential accommodation provided for by the employer or in default to incur certain obligations on the ground that he owns a residential accommodation in his name, or in the name of his wife or dependent child, near the place where he is posted. It is urged that since in this case a notice containing a statement which satisfies the requirements of Sub-section (1) of Section 29B of the Act had been served on the first respondent, no enquiry is called for on the question of title. In the alternative, it is urged on behalf of the respondents that even granting that the issue relating to title can be raised, the respondents have established that the premises in question belonged to the first respondent though it stood in the name of his wife. It is further urged that the finding of the High Court on the question of title is not sustainable and that they are entitled to raise that plea in support of the judgment of the High Court which has gone in their favour. In the circumstances of this case we feel that it is not necessary to go into the questions whether the question of title to the premises is relevant at all and if it is relevant, whether it can be gone into by the Controller. We shall assume for purposes of these appeals (but without deciding) that as contended on behalf of the

appellants, a Government employee can succeed, where the building stands in the name of his wife or dependent child, only if he establishes that he is himself its true owner and that the building is only nominally standing in the name of his wife or dependent child, as the case may be. In the instant case it is to be noted that on the date of the petitions before the Controller, the wife of the first respondent had died. Even granting that she was the owner of the building in question, the first respondent had become its co-owner along with his children. The order asking him to vacate the Government accommodation issued earlier had not been withdrawn and was still in force even on the date of the petition. He was, therefore, entitled to maintain the petitions as he otherwise satisfied the requirements of the law. Such a petition had to be filed before the Controller as the Civil Court had no jurisdiction to try it.

8. As held by this Court in *Kanta Goel v. B.P. Pathak and Ors.* even though the first respondent was a co-owner, he was as much an owner of the entire property as any sole owner of the property and owned every part of the composite property alongwith others and he could file the petitions. In *Shri Ram Pasricha v. Jagannath and Ors.* which was a case arising under the Act this Court had expressed the same view. The first respondent as an heir could avail of the benefit of the notices issued in the name of his wife under Section 13(6) of the Act which she was entitled to issue the object of which was only to give previous intimation to the tenants that eviction petitions would be filed against them. There was no need to issue fresh notices after her death. Having regard to the peculiar feature of the case, we do not consider that there is any infirmity in the petitions filed for the eviction of the appellants. Any other view would defeat the very object of Chapter VIA of the Act.

9. The only other ground urged on behalf of the appellants is that since the first respondent had retired during the pendency of these proceedings, he had lost his right to prosecute the petition under Section 29B of the Act as he was no longer a Government employee. This contention again is untenable as a petition duly filed under the circumstances stated above cannot be defeated on the ground that the Government employee has retired subsequently. (See *Nihal Chand . Kalyan Chand Jain per Tulzapurkar, J.* which was a case under Section 14A of the Delhi Rent Control Act).

10. It is not the contention of the appellants that the respondents had not established that the premises were reasonably required by them for their own occupation and they were not in possession of any other reasonably suitable accommodation. It is unfortunate that even the so called summary remedy provided by the statute has taken nearly four years.

11. We do not find any error in the decisions of the Controller and the High Court which calls for our interference under Article 136 of the Constitution.

12. In the result, the appeals fail and are hereby dismissed, shall, however, be no order as to costs.