

A.C. Estates (Landlords) vs Serajuddin & Co. (Tenants) on 16 February, 1973

Equivalent citations: AIR1973SC2117, (1973)2SCC324, AIR 1973 SUPREME COURT 2117, 1973 2 SCC 324, 1973 (1) SCWR 386, 1973 SCD 277, 1973 RENCNR 309

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Bench: A.N. Grover, K.K. Mathew

JUDGMENT

A.N. Grover, J.

1. These appeals have been brought by certificate from a common judgment of the Calcutta High Court arising out of fixation of standard rent relating to the following three premises in a building in Bentinck Street, Calcutta, known as the A. C, Mansions:

1. Block A, B & C on the first floor.
2. Suite nos. 14 and 16 on the fifth floor.
3. Suite No. 12 on the fifth floor.

2. It is not necessary to state the details except to mention only a few material facts which are relevant for the purpose of disposing of the point which has been raised. It appears that certain agreements were reached between the parties in the years 1951-52 for leasing out the premises in question. In 1954 suits for specific performance were filed by the appellant against the respondent for enforcing the agreements relating to the leases. In March 1955 three applications were filed for fixing of standard rent by the respondent. These applications were preferred under the West Bengal Premises Rent Control (Temporary Provisions) Act 1950. By an order dated December 5, 1955 the Rent Controller acting under Section 9(1)(e) of the said Act fixed the standard rent at figures much less than the agreed amounts in all the three cases. An appeal was taken to the Court of Small Causes by the appellant. The appellate judge dismissed the appeal relating to Block A, B & C and suite No. 12 but with respect to suit nos. 14 and 16 he partly allowed the appeal by slightly increasing the standard rent. He dismissed cross appeals filed by the respondent. Thereafter both the appellant and the respondent moved the High Court and obtained rules. The High Court by its judgment dated March 7, 1957 remanded the cases to the appellate judge for fresh consideration in accordance with the directions given by it. After recording further evidence the appellate judge dismissed all the

appeals and confirmed the rents fixed by the Rent Controller. The appellant then moved the High Court under Section 32(4) of the 1950 Act and obtained three rules. By a common judgment dated July 24, 1961 the High Court made certain increases in the rents in respect of Block A, B, & C and suites 14 and 16 but declined to interfere in respect of the rent fixed for suite No. 12.

3. Now when the proceedings were pending before the Court of Small Causes the West Bengal Premises Tenancy Act 1956 came into force on March 31, 1956. According to the appellant, under Section 19(1)(e) of the 1950 Act the basis for fixing the standard rent was the "basic rent", i.e., the rent payable for the premises if let on December 1, 1941 plus an addition upto 10% for residential letting and upto 15% for non-residential letting. But under Section 8(1)(e) of the Act of 1956 which repealed the earlier Act the basis of fixing a fair rent was quite different. It was to be reasonable rent based on the prevailing rents in the locality of similar or nearly similar premises. The appellant claims that if the fair rent had been fixed under Section 8(1)(e) of the Act of 1956 it would have approximately been the same as the contractual rent, whereas under the Act of 1950 it is extremely low. During the pendency of the appeal before the appellate judge of the Court of Small Causes an application had been filed by the appellant under Section 113 read with Order 46 of the CPC in which it had been stated that a question of law arose whether the provision made in the Act of 1956 that the proceedings which had been instituted under the Act of 1950 were to be continued under that Act were violative of Article 14 of the Constitution. It was prayed that a reference be made of that question to the High Court but that prayer was declined by the appellate judge. The appellant then moved the High Court under Article 228 of the Constitution but on December 21, 1959 that application was dismissed summarily. This question was again sought to be raised before the High Court when the revision cases were finally heard. But the High Court declined to go into the matter observing that it was no longer open after the rejection of the appellant's application under Article 228 of the Constitution as mentioned earlier.

4. Section 40 of the Act of 1956 repealed the earlier Act of 1950 which was a temporary Act, and which, it appears to have been extended from time to time. It was provided by Section 40(2)(a) that notwithstanding the repeal of the Act of 1950 any proceeding pending on 31st day of March 1956 may be continued as if the said Act had (not?) been repealed or had not expired. In the Explanation it was stated that "proceeding" included any suit, appeal, review or revision, application for execution or any other proceeding whatsoever under the Act of 1950. Sub-section (2-A) of Section 40 which was inserted by Section 4 of the West Bengal Premises Tenancy (Amendment) Act 1959 was to the following effect:

(2A) For the removal of doubts it is hereby declared that notwithstanding any decision of any court to the contrary, any proceeding pending on the 31st day of March, 1956 which was continued after that date and any decree passed or order made after that date in accordance with the provisions of the said Act in any such proceeding shall be deemed to have been validly continued, passed or made, as if the said Act had been in force and had not been repealed or had not expired, and no such proceeding, decree or order shall be called in question in any manner merely on the ground that the said Act was not in force when such proceeding was continued, decree was passed or order was made.

Section 8 of the 1956 Act gave the meaning of "fair rent". Clauses (b) and (c) of Sub-section (1) may be read:

(b) where the rent of such premises has been fixed under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, whether by way of revision of the rent previously fixed under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, or not, the rent so fixed;

(c) where any proceeding is pending for fixation of rent of such premises under the West Bengal Premises Rent Control (Temporary Provisions) Act 1948 or under the West Bengal Premises Rent Control (Temporary Provisions) Act 1950, the rent fixed under the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950.

5. The only argument sought to be raised on behalf of the appellant relates to the Constitutional validity of the above provisions of the Act of 1956 under which if any proceeding was pending for fixing of fair rent under the Act of 1950 the rent had to be fixed under the provisions of that Act and not under the provisions of the new Act, namely, the Act of 1956. It has not been; disputed that if those provisions are valid and cannot be struck down as violative of Article 14 of the Constitution the standard rent, as determined, under the Act of 1950 cannot be challenged. This Court has taken the view that authorities under a taxing statute are not concerned with the validity of the taxing provisions and the question of ultra vires is foreign to the scope of their jurisdiction. Any point relating to the Constitutional validity of a taxing provision could not be raised before the income tax authorities and therefore neither the High Court nor the Supreme Court could go into those matters in a revision or reference from the decision of those authorities. See *K.S. Venkataraman & Co. v. State of Madras*, *Commissioner of Income-tax, Madhya Pradesh v. Straw Products Ltd., Bhopal*, and *C.T. Senthilnathan Chettiar v. State of Madras*. Although these decisions were given in provisions relating to taxing statutes we are of the opinion that the same rule would be applicable to a case of the present nature. In other words it can well be said that the question of ultra vires was wholly foreign to the scope and the jurisdiction of the Rent Controller. As the appeals and the revisions which were later preferred were from the orders of the Rent Controller fixing the standard rent in accordance with the provisions of the Rent Control statute, we are unable to see any distinction between the present cases and those decided by this Court arising out of a taxing statute. If the Rent Controller could not have decided the Constitutional validity of the provisions which have been impugned in the same way as the taxing authorities could not have determined the Constitutional validity of the taxing statute it would not be open either to the High Court or to this Court to go into those questions in proceedings arising out of fixation of standard rent.

6. In the result the appeals fail and they are dismissed. We make no order as to costs.