Om Prakash Gupta vs Rattan Singh And Another on 17 December, 1962

Equivalent citations: AIRONLINE 1962 SC 9

PETITIONER:
OM PRAKASH GUPTA

Vs.

RESPONDENT:
RATTAN SINGH AND ANOTHER

DATE OF JUDGMENT:
17/12/1962

BENCH:

ACT:
Rent Control-Penant availing benefit-Denying relationship-Jurisdiction of Rent Controller-Delhi Rent Control Act (Act LIX of 1958), s. 15.

HEADNOTE:
The appellant was sought to be evicted by the landlord on the ground that he had habitually defaulted in the payment of rent as well as on the ground of the bonafide requirement of the land-lord for his own occupation. He resisted the suit inter alia on the ground that the premises had been let to the
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All India Postal R. M. S. Union for office-cum-residential purposes and that the tenancy of the Union had not been terminated and that the rent had not been demanded from the Union. The appellant was directed to deposit the arrears of rent up-to-date as also to go on depositing the future rent accruing due month by month. The respondent applied under s. 15(7) of the Act for striking out the defence of the appellant on the ground that he had failed to comply with the orders directing him to deposit the rent. Rejecting the explanation of the appellant the Additional Rent Controller ordered the defence of the appellant to be struck out on July 26, 1961, and proceeded to pass an ex-parte decree for eviction. The appellant went in appeal against the order striking out the defence which was dismissed by the Rent Control Tribunal both on the ground that it was barred by time as also on merits on March 6, 1961. The appellant did not take the matter in further appeal to the High Court.

Against the decree for eviction the appellant went to the Rent Control Tribunal which dismissed the appeal. The appellant went in further appeal to the High Court which also dismissed the appeal summarily. On special leave, it was contended that the appellant having denied the existence of the relationship of landlord and tenant, the Rent Controller had no jurisdiction in the matter.

Held, that under the Rent Control Law, the special tribunal has to proceed on the basis of the relationship of landlord and tenant existing between the parties but a mere denial by the tenant of the tenancy would not suffice to oust the jurisdiction of the special tribunal. It is only when the tribunal comes to the conclusion that such a relationship did not exist that it will have no jurisdiction.

Held, further, that the provisions of s. 15 read with the definition of "landlord" enable the Rent Controller to determine the question of the relationship of landlord and tenant for the benefit of the tenant and when a party has invited the Rent Controller to apply the provisions of s. 15 for his benefit and the Rent Controller does so, he is deemed to have decided such a person is a tenant. The proper course for a person pleading that he was not a tenant would be to raise the plea and walk out of the proceedings and not to submit to jurisdiction.

Held, further, that the appellant not having taken the matter of striking out his defence under s. 15 (7) in appeal to the High Court the question of his being a tenant or otherwise had become final and could not be reagitated.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 541 of 1962. Appeal by special leave from the judgment and order dated May 31, 1962, of the Punjab High Court (Circuit Bench) at Delhi in S. A. O. No. 86-D of 1962.

A.S. B. Chari, M. K. Ramamurthi, D. P. Singh and B. K. Garg, for the appellant.

G. S. Pathak, F. C. Bedi and D. D. Sharma, for respondents. 1962. December 17. The judgment of the Court was delivered by SINHA, C. J.-This appeal by special leave is directed against the judgment and order of a learned single judge of the Punjab High Court summarily dismissing the appeal filed by the appellant, by his order dated May 31, 1962, from the order of the Rent Control Tribunal dated March 7, 1962, con- firming that of the Additional Rent Controller, Delhi, dated July 27, 1961, whereby he had directed the appellant to be evicted from the premises in question.

It appears that the respondents are admittedly the landlords of the premises, No. 24, Ansari Road, Darya Ganj, Delhi. The appellant claims to have been in occupation of the premises since prior to 1950, at a monthly rent of Rs. 50/-. In 1955, the respondent had instituted a suit for the eviction of

the All India Postal & R.M.S. Union, and the appellant was also impleaded as a party to the suit. The respondents, in 1958, made an application for amendment of the plaint on the ground that they had come to know that the last owner, the father of the first respondent, had let the building to the appellant for his residential purposes and that the case should proceed againt him only. But the Subordinate judge, before whom the suit was pending, did not permit the amendment of the plaint but granted permission to withdraw from the suit with liberty to bring a fresh one, by his order dated May 8, 1959. Thereafter, on February 25, 1960, the respondents made an application before the Rent Controller, Delhi, for the eviction of the appellant alone, without impleading the Union aforesaid as a party: The contention of the appellant was that the premises had been let out by the father of the first plaintiff-respondent to the All India Postal & R.M.S. Union for office-cum-residential purposes and the tenancy of the Union had never been terminated. The appellant also alleged that he was not a tenant and, therefore, the application for his eviction was not maintainable. The petition for eviction was founded on the allegation that the appellant as tenant had made persistent default in the payment of rent and, secondly, that the premises were bonafide required by the respondents for their own residence, as the first respondent was about to leave the employment of a certain hospital which had provided him with residential accommodation. That is to say,the petition for eviction was brought under s.14(1)(a) &

(e) of the Delhi Rent Control Act (LIX of 1958)which will be referred to in the course of the judgment as the Act. The appellant besides denying his tenancy and asserting the tenancy of the Union aforesaid stated that the respondents had already got suitable accommodation and that their requirement of the premises in question was not bonafide; the notice of demand for payment of rent served on the appellant was neither valid nor proper in law inasmuch as he was not the tenant in respect of the premises, and that the notice of demand should have been served on the Union. The appellant asserted that he was only a licensee of the Union, and that there was no relationship of landlord and tenant between him and the respondents. On April 2, 1960, the Additional Rent Controller passed an order directing the appellant to deposit the arrears of rent from August 1,1958, up-to-date, at the rate of Rs. 50/- per month, and future monthly rent, month by month, by the 15th of every following month. The respondents made an application on May 16, 1961, under s. 15(7) of the Act for striking out his defence against eviction on the ground that the tenant had failed to make the payment or deposit, as directed by the order dated April 2, 1960, aforesaid. The appellant denied that he had made any default in the regular payment of rent, but also asserted that if there was any such default it was not intentional and was the result of a miscalculation. By his order dated July 26, 1961, the Additional Rent Controller ordered the defence of the appellant to be struck out. An appeal against the order striking out his defence was made to the Rent Control Tribunal on September 15, 1961, which was late by one day. The learned Tribunal dismissed the appeal as time-barred, as also on merits, by its order dated March 6, 1962. By his order dated July 17 , 1961, the Additional Rent Controller passed an ex-parte order of,ejectment against the appellant holding that prima facie the relationship of landlord and tenant had been established, on the basis of certain rent receipts granted by the respondents to the appellant. He also held that the respondents' personal bonafide need for accommodation had been established. Appeal against that order was dismissed on March 7, 1962, by the Rent Control Tribunal. On May 28, 1962, the appellant filed a second appeal in the High Court of Punjab at Delhi against the order dated March .7, 1962, of the Rent Control Tribunal, dismissing his appeal against the order of eviction. No second appeal was taken to the High Court in

respect of the dismissal of the appeal relating to the order dated March 6, 1962, of the Rent Control Tribunal dismissing his appeal in respect of the order of the Additional Rent Controller striking out his defence.The second appeal was dismissed summarily by a Single judge on May 31, 1962. The appellant moved this Court during the long vacation and obtained an order from the learned Vacation judge granting special leave to appeal, on June 5, 1962.

A preliminary objection was taken on behalf of the landlord- respondent that no second appeal having been filed againts the order aforesaid of the Rent Control Tribunal, dismissing his appeal in respect of the order of the Additional Rent Controller striking out his defence, that order had become final between the parties, and, therefore, this appeal was incompetent. As will presently appear, this question is bound up with merits of the appeal and has, therefore, to be determined not as a preliminary objection but as one of the contentions between the parties, on the merits of the appeal itself.

It was argued on behalf of the appellant that the authorities under the Act had no jurisdiction to entertain the proceedings, inasmuch as it was denied that there was any relationship of landlord and tenant between the parties. Consequently, it was further contended, the provisions of s. 15 (7) of the Act could not be applied against the appellant in the absence of a finding that he was the tenant in respect of the premises in question. It was also contended that the delay of one day made in preferring the appeal to the Rent Control Tribunal should have been condoned, and the order refusing condonation was vitiated by applying erroneous considerations. Other contentions raised related to concurrent findings of fact of the Rent Controller and the Rent Control Tribunal and we need not, therefore, take notice of these arguments. The most important question that arises for determination in this case is whether or not the Rent Control authorities had jurisdiction in the matter in- controversy in this case. Ordinarily it is for the Civil Courts to determine whether and, if so, what jural relationship exists between the litigating parties. But the Act has been enacted to provide for the control of rents and evictions of tenants, avowedly for their benefit and protection. The Act postulates the relationship of landlord and tenant which must be a preexisting relationship. The Act is directed to control some of the terms and incidents of that relationship. Hence, there is no express provision in the Act empowering the controller, or the Tribunal, to determine whether or not there is a relationship of landlord and tenant. Inmost cases such a question would not arise for determination by the authorities under the Act. A landlord must be very ill- advised to start proceedings under the Act, if there is no such relationship of landlord and tenant. If a person in possession of the premises is not a tenant, the owner of the premises would be entitled to institute a suit for ejectment in the Civil Courts, untrammelled by the provisions of the Act. It is only when he happens to be the tenant of premises in an urban area that the provisions of the Act,are attracted. If a person moves a Controller for eviction of a person on the ground that he is a tenant who had, by his acts or omissions, made himself liable to be evicted on any one of the grounds for eviction, and if the tenant denies that the plaintiff is the landlord, the Controller has to decide the question whether there was a relationship of landlord and tenant. If the Controller decides that there is no-such relationship the proceeding has to be terminated, without deciding the main question in controversy, namely the question of eviction. If on the other hand, the Controller comes to the opposite conclusion and holds that the person seeking eviction was the landlord and the person in possession was the tenant the proceedings have to go on. Under s. 15 (4) of the Act, the Controller is

authorised to decide the question whether the claimant was entitled to an order for payment of rent, and if there is a dispute as to the person or persons to whom the rent is payable, he may direct the tenant to deposit with him the amount payable until the decision of the question as to who is entitled to that payment. "Landlord" has been defined under the Act as a person who is receiver or is entitled to receive the rent of the premises (omitting the words not necessary for our present purposes). If the Controller comes to the conclusion that any dispute raised by the tenant as to who was entitled to receive rent had been raised by the tenant for false or frivolous reasons, he may order the defence against eviction to be struck out (s. 15 (5)). Similarly, if a tenant fails to make payment or deposit as required by s. 15 (2), the Controller may order the defence against eviction to be struck out and proceed with the hearing of the application for eviction (s. 15 (7)). Such an order was, as already indicated, passed by the Rent Controller in this case. Now, proceedings under s. 15 are primarily meant for the benefit of the tenant, and the section authorises the Controller after giving the parties an opportunity of being heard, to make an order directing the tenant to pay the amount found on calculation to be due to the landlord or to deposit it with the Controller, within one month of the date of the order. Such an order can be passed by the Controller for the benefit of the tenant, only if the Controller decides that the person against whom the proceedings for eviction had been initiated was in the position of a tenant. Thus, any order passed by the Controller, either under s. 15 or other sections of the Act, assumes that the Controller has the jurisdiction to make the order, i. e., to determine the issue of relation- ship. In this case, when the Controller made the order for deposit of the arrears of rent due, under s. 15 (1), and on default of that made the order under sub-s. (7) of s. 15, striking out the defence, the Controller must be deemed to have decided that the appellant was a tenant. Such a decision may not be res judicata in a regular suit in which a similar issue may directly arise for decision. Hence, any orders made by a Controller under the Act proceed on the assumption that he has the necessary power to do so under the provisions of the Act, which apply and which are meant to Control rents and evictions of tenants. An order under s. 15 (1) is meant primarily for the protection and benefit of the tenant. If the appellant took his stand upon the plea that he was not a tenant he should have simply denied the relationship and walked out of the proceedings. Instead of that, he took active steps to get the protection against eviction afforded by Act, by having an order passed by the Controller, giving him a locus poenitentiae by allowing further time to make the deposit of rent outstanding against him. The Controller, therefore, must be taken to have decided that there was a relationship of landlord and tenant between the parties, and secondly, that the tenant was entitled to the protection under the Act. It is true that the Act does not in terms authorise the authorities under the Act to determine finally the question of the relationship of landlord and tenant. The Act proceeds on the assumption that there is such a relationship. If the relationship is denied, the authorities under the Act have to determine that question also, because a simple denial of the relationship cannot oust the jurisdiction of the tribunals under the Act. True, they are tribunals of the limited jurisdiction, the scope of their power and authority being limited by the provisions of the Statute. But a simple denial of the relationship either by the alleged landlord or by the alleged tenant would not have the effect of ousting the jurisdiction of the authorities under the Act, because the simplest thing in the world would be for the party interested to block the proceedings under the Act to deny the relationship of landlord and tenant. The tribunals under the Act being creatures of the Statute have limited jurisdiction and have to function within the four-corners of the Statute creating them. But within the provisions of the Act, they are tribunals of exclusive jurisdiction and their orders are final and not liable to be questioned in collateral

proceedings like a separate suit or application in execution proceedings. In our opinion, therefore, there is no substance in the contention that as soon as the appellant denied the relationship of landlord and tenant; the jurisdiction of the authorities under the Act was completely ousted. Nor is there any jurisdiction in the contention that the provisions of sub-s. (7) of s. 15 of the Act had been erroneously applied to the appellant. The orders under those provisions were for his benefit and he must be deemed to have invited the Controller to pass those orders in his favour. Otherwise, he should have walked out of the proceedings after intimating to the Controller that he was not interested to contest the proceedings in as much as he was not a tenant, and that a third party was the tenant. This order, of course, will bind only the appellant and no one else, and as he failed to take advantage of the order passed in his favour under s. 15 (7), he cannot make a grievance of it. Whether or not a delay of one day should have been condoned was a matter of discretion with the appellate authority, and it is not for this Court to say that this discretion should have been exercised in one way and not in another. The crucial question is not whether the delay is of one day or more, but whether or not there was any justification for the delay. It is for the appellate authority to determine whether or not the appellant had satisfied it as to the sufficiency of the ground for condoning the delay. This question of condonation of delay is more or less of academic interest only, because the Tribunal not only considered the question of delay but also the appeal on its merits, and on merits also it came to the conclusion that there was no ground for interference with the orders passed by the Rent Controller. Hence, the question of condonation of delay is of no importance in this case. What is of greater importance is the merit of the decision awarding possession to the landlord. In this connection, it may be added that it was a little inconsistent on the part of the appellant to have taken all the advantages the Act affords to a tenant and then to turn round and to assert that the Rent Controller had no jurisdiction in the matter, because he was not. the tenant. The Rent Controller had to determine the controversy as between the parties for the purposes of disposing of the case under the Act. If the appellant really was a tenant, he has had the benefit of the provision of the Act, including the six months' time as a period of grace after an order of the Rent Controller granting the landlord's prayer for eviction. If he was not the tenant, he has nothing to lose by the order of the Rent Controller. These proceedings cannot affect the interest of one who is not a party to the present case. Furthermore, a second appeal lay from the appellate order of the Rent Control Tribunal dismissing the appellant's appeal against the order striking out his defence. No such second appeal was taken to the High Court, though as already stated a second appeal was preferred against the order of the Rent Control Tribunal dismissing his appeal against the order of eviction. The position is that the appellate order of the Rent Control Tribunal, dated March 6, 1962, dismissing the appeal against the order striking out his defence became final between the parties and is no more open to challenge. Hence, it is no more open to the appellant to challenge the jurisdiction of the authorities under the Act.

In our opinion, therefore, there is no merit in his appeal. It is accordingly dismissed with costs.

Appeal dismissed.