

Atma Ram Mittal vs Ishwar Singh Punla on 22 August, 1988

Equivalent citations: 1988 AIR 2031, 1988 SCR SUPL. (2) 528, AIR 1988 SUPREME COURT 2031, (1988) 2 APLJ 40, (1988) 3 JT 745 (SC), (1989) 1 PUN LR 143, 1988 (4) SCC 284

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:
ATMA RAM MITTAL

Vs.

RESPONDENT:
ISHWAR SINGH PUNLA

DATE OF JUDGMENT 22/08/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 2031 1988 SCR Supl. (2) 528
1988 SCC (4) 284 JT 1988 (3) 745
1988 SCALE (2) 658
CITATOR INFO :
E&F 1990 SC 897 (11,14)
RF 1992 SC 573 (33)

ACT:

Haryana Urban [Control of Rent and Eviction] Act, 1973:
Sections 1 [3] and 13 [1]-Exemption from applicability of
Rent Control Act-Period of 'ten years' exemption-Expiring
during pendency of eviction suit-Effect of-Once rights
crystallise adjudication to be in accordance with law.

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Statutory Constitution: Purposive interpretation in a
social amelioration-An imperative of anything else.

Words and Phrases: 'Actus curiam neminem gravabit'-
Meaning of.

HEADNOTE:

The appellant-landlord filed a civil suit against the respondent-tenant for possession of a shop which had been rented out by him in 1978. The suit was filed on the basis that the respondent was in arrears of rent from 1st December, 1981 to 31st May, 1982, that the tenancy had been terminated by giving a suit notice, and that section 1(3) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 exempted the building from the purview of the Act.

On or about 15th February, 1983, the respondent-tenant filed his written statement, and in November, 1984, moved an application for dismissal of the suit stating that the shop in question was constructed in June 1974 and as such, the period of 10 year had elapsed by June 1984 in terms of section 1 [3] of the Act and as such, the immunity from the application of the Act having expired, the suit under the Act is not maintainable, and that the jurisdiction of the Civil Court was barred.

The Sub-Judge held that the decree was not necessary, to be passed within the exemption period of 10 years under section 1 (3) of the Act, and accordingly dismissed the respondent's application.

The respondent preferred a revision petition to the High Court, which held that as the suit had not been decreed within the period of 10 years, the building in question came within the operation of the Act and as such,

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the rent Act was applicable and the Civil Court had no jurisdiction. The High Court allowed the petition and consequently dismissed the suit pending before the Sub-Judge.

The landlord appealed to this Court by Special Leave.

Allowing the appeal and remanding the case,

HELD: 1.(a) The rights of the parties will have to be determined on the basis of the rights available to them on the date of the suit. The Judgment and Order of the High Court set aside, and order of the Sub-Judge restored. The suit to proceed in accordance with law. {533G-535F}

(b) Section 13 of the Act provides that the tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of the said Section. Those provisions would not be applicable under Section 1(3) to a suit instituted within 10 years from the date of the completion of the building in question. {534B}

(c) It is well-settled that no man should suffer because of the fault of the Court or delay in the procedure. "Actus curiam neminem gravabit"-an act of Court shall prejudice no man. [534E]

(d) Having regard to the time normally consumed for adjudication, the 10 years exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of

finally. [534F]

(e) It is common knowledge that unless a suit is instituted soon after the date of letting, it would never be disposed of within 10 years and even then within that time it may not be disposed of. That will make the 10 years holiday from the Rent Act illusory and provide no incentive to the landlords to build new holiday to solve problem of shortages of houses. The purpose of the legislation would thus be defeated. [534G]

(f) Bearing in mind the well-settled principle, that the rights of parties crystallise on the date of the institution of the suit, the meaningful construction must be that the exemption would apply for a period of 10 years and will continue to be available until the suit is disposed of or adjudicated. Such suit or proceedings must be instituted within the stipulated period of 10 years. Once rights crystallise the adjudication must be in accordance with law. [535E]

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Vineet Kumar v. Mangal Sain Wadhera, [1984] 3 S.C.C. 352; Nand Kishore Marwah and Ors. v. Samundri Devi, [1987] 4 S.C.C. 382; Om Prakash Gupta v. Dig. Vijendrapal Gupta, [1982] 3 S.C.R. 491; Ram Saroop Rai v. Lilavati, [1980] 3 S.C.C. 452, referred to.

2.(a) Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else. [534G]

(b) Judicial time and energy is more often than not consumed in finding what is the intention of the Parliament or in other words, the will of the people. The fairest and most rational method to interpret the will of the legislator is by exploring his intentions at the time when the law was made, by signs most natural and probable and these signs are either the words, the context, the subject matter, the effects and consequences or the spirit and reasons of the law. [534H-535A]

(c) Each word, phrase or sentence has to be construed in the light of the purpose of the Act itself but words must be construed with imagination of purpose behind them. Though the Court is concerned with seeking of intention, it is rather looking to the meaning of the word that the legislator has used and the true meaning of the words used. {535B}

Poppatlal Shah v. State of Madras, [1953] SCR 677 and Black-Clawson International Ltd. v. Papierwerke Walnhof-Aschaffenburg A G, [1975] A.C. 591 at 613.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3081 of 1988.

From the Judgment and Order dated 25. 10. 1985 of the Punjab and Haryana High Court in Civil Revision No. 2457 of 1985.

R.K. Jain and Ms. Abha Jain for the Appellant. K.C. Sharma and R.K. Virmani for the Respondent. The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. Special leave granted. The appeal is disposed of herein after hearing counsel for both the parties.

The appellant-landlord filed a suit for possession in the Civil Court of Hissar in Haryana. The respondent is the tenant in the shop situated at Raj Guru Market which had PG NO 531 been rented out to the respondent in 1978. The suit was filed on the basis that the respondent was in arrears of rent from 1st December, 1982 to 31st May, 1982 and the tenancy of the respondent had been terminated by giving him notice. The suit was filed for recovery of possession on the termination or expiry of the period of tenancy. It was filed because of Section 1(3) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as 'the Act'). The Act was passed with the object to control the increase of rent of certain buildings and rented land situated within the limits of urban areas and the eviction of tenants therefrom. For our present purpose, it would suffice if we bear in mind two relevant provisions. Section 1(3) of the Act provides as follows :

"Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date its completion. "

Section 13 of the Act deals with the eviction of tenants and sub-section (1) thereof provides that the tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of that section. The section thereafter enumerates the statutory grounds for eviction upon which eviction is permitted which incidentally are more or less similar statutory ground all over the country.

On or about 15th February, 1983, the respondent-tenant filed his written statement. In November, 1984, the respondent-tenant moved an application for dismissal of the suit of the appellant stating that the shop in question was constructed in June, 1974 as such the period of ten years had elapsed by June, 1984 in terms of section 1(3) of the Act. and, as such, the immunity from the application of the had expired. The suit under the Act is not maintainable and the Jurisdiction of the Civil Court stands barred. The learned Sub-Judge, Hissar. held that the decree was not necessary to be passed within the exemption period of ten years under section 1(3) of the Act. the learned Sub-Judge accordingly dismissed the respondent's application. Aggrieved thereby, the tenant-respondent preferred a revision to the High Court of Punjab and Haryana. The High Court held that as the suit had not been decreed within the period of ten years, the building in question came within the operation of the Act and as such the Rent Act was applicable and the Civil Court had no jurisdiction. In the PG NO 532 premises, the learned Judge of the High Court dismissed the suit pending before the Sub-Judge. Aggrieved thereby the appellant has come up in appeal to this Court. More or less identical provisions of the U. P. Act had come up for consideration before this Court in the case of Vineet Kumar v. Manal Sain Wadhera, [1984] 3 S.C.C. 352. The only point that was urged before this Court in that decision was whether the premises which was not ten years' old on the date of the suit

and was exempted from the operation of the new Rent Act, could be governed by it if ten years expired during the pendency of the litigation. The relevant provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 provided as follows:

"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 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 entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceeding, which is either recorded in court or otherwise reduced to writing and signed by the tenant."

In Vineet Kumar v. Mangal Sain Wadhera, [supra], the respondent-landlord filed a suit for eviction and for arrears of rent and damages, inter alia, on the grounds that the building in question was not covered by the U.P. Urban Buildings [Regulation of Letting, Rent and Eviction] Act, 1972 in view of the exemption granted to new buildings under section 2 [2] of the said Act and that the defendant-appellant had defaulted in payment of rent. The tenant had resisted the claim on the ground that having regard to the date of construction of the building, it was covered by the Act, that the plaint having not been amended so as to bring the suit under the Act, it was barred by section 20 and that there was no default in payment of rent. As mentioned hereinbefore, during the pendency of the litigation the exemption granted under section 2 [2] expired. The question was whether the premises which was not ten years' old on the date of the suit and was exempted from the operation of the Rent Act, would be governed by it if ten years expired during the pendency of the litigation. Allowing the appeal, this Court held that the appellant must get benefits of the Act which became applicable to the premises in question during the pendency of the litigation. That would not affect the cause of action in that case. It was held that the contention that the Court had to decide the case on the basis of cause of action that accrued prior to the date of filing the suit and not on a new cause of action was not sustainable. It was further held that normally amendment in plaint is not allowed if it changes the causes of action. However, where the amendment does not constitute an addition of a new cause of action, or raise a new case, but amounts to no more than adding to the facts already on the record, the amendment would be allowed even after the statutory period of limitation. This Court observed that processual justice required that the events and developments subsequent to the institution of proceedings must be taken into consideration in appropriate cases to promote substantial justice. Vineet Kumar's case (supra) was discussed and explained by this Court in Nand Kishore Marwah and others v. Sammundri Devi, [1987] 4 S.C. 382. This Court held that in view of section 2(2) of the 1972 Act, if an assessment is made of the newly built house then the date of completion of the building, the date from which 10 years have to be computed will be the date on which the first assessment was made. Therefore, the period of 10 years have to be computed from October, 1976. This Court further held that if a tenant is entitled to the advantage of sections 39 and 40 of the Act and the period of 10 years elapses during the pendency of the eviction suit or appeal before this Court (which is the continuation of the suit), then the tenant would be

entitled to the benefits of the Act. This Court further held that within 10 years as provided for in section 2(2) restriction on the institution of suit as provided for in section 20 (1) will not be applicable. It was held that during the pendency of the litigation even if 10 years expired the restriction under section 20 will not be attracted as the suit had been instituted within 10 years. It is well-settled that the rights of the parties will have to be determined on the basis of the rights available to them on the date of the suit. This Court pointed out that the attention of the Court had not been drawn to the decision of this Court in *Om Prakash Gupta v. Dig. Vijendrapal Gupta*, [1982] 3 S.C.R. 491. This Court referred to the words used in section 20 of the said Act which emphasised that "no suit shall be instituted for eviction." "This clearly indicates that the restriction put under section 20 of the said Act is to the institution of the suit itself and, therefore, it is clear that if the provision of PG NO 534 this Act applies then no suit for eviction can be instituted except on the grounds specified in the sub-sections of that section of the Act. This applies more so in the instant case where the section 13 of the Act provides that the tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this section. Those provisions would not be applicable to a suit instituted within 10 years from the date of the completion of the building in question. That is the plain meaning of the expression "use". It was further to be borne in mind that in finding out the plain meaning of the expression "use" the language, the background, the context, the purpose, these all have to be borne in mind. In *Ram Saroop Rai v. Lilavati*, [1980] 3 S.C.C. 452, Krishna Iyer, J. has explained the section 2(2) of the U. P. Act as follows ;

"The legislature found that rent control law has a chilling effect on new building construction, and so, to encourage more building operations, amended the statute to release, from the shackle of legislative restriction, 'new constructions' for a period of ten years. So much so, a landlord who had let out his new building could recover possession with-out impediment if he instituted such proceedings within ten years of completion ?' It is well-settled that no man should suffer because of the fault of the Court or delay in the procedure. Broom has stated the maxim "actus curiam neminem gravabit"-an act of Court shall prejudice no, man. Therefore, having regard to the time normally consumed for adjudication, the 10 years exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within 10 years and even then within that time it may not be disposed of. That will make the 10 years holidays from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else. Judicial time and energy is more often than not consumed in finding what is the intention of the Parliament or in other words, the will of the people. Blackstone tells us that the fairest and most rational method to interpret the will of the legislator is by exploring his intentions at PG NO 535 the time when the law was made, by signs most natural and probable. And these signs are either the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law. (Underlined by the Court). See

Commentaries on the Laws of England (facsimile of 1st edition of 1765, University of Chicago Press, 1979 Vol. 1, p. 59). Mukherjea, J. as the learned Chief justice then was, in *Poppatlal Shah v. State of Madras*, [1953] SCR 677 said that each word, phrase or sentence was to be construed in the light of purpose of the Act itself. But words must be construed with imagination of purpose behind the said Judge Learned Hand, long time ago. It appears, therefore, that though we are concerned with seeking of intention, we are rather looking to the meaning of the words that the legislator has used and the true meaning of what words as was said by Lord Reid in *Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A G*, [1975] Appeal Cases 591 at 613. We are clearly of the opinion that having regard to the language we must find the reason and the spirit of the law. If the immunity from the operation of the Rent Act is made and depended upon the ultimate disposal of the case within the period of exemption of 10 years which is in reality ability, then there would be empty reasons. In our opinion, bearing in mind the well-settled principle that the rights of the parties crystallise on the date of the institution of the suit as enunciated by this Court in *Om Prakash Gupta v. Dig Vijendrapal Gupta*, (supra), the meaningful construction must be that the exemption would apply for a period of 10 years and will continue to be available until suit is disposed of or adjudicated. Such suit or proceeding must be instituted within the stipulated period of 10 years. Once rights crystallise the adjudication must be in accordance with law.

In that view of the matter, we are of the opinion that the High Court was in error in the view it took. The judgment and order of the High Court are set aside and the order of the learned Sub-Judge is restored. The suit will now proceed in accordance with law in the light of the observations herein as expeditiously as possible. The costs of the appeal will be the costs of the suit.

N.V.K.

Appeal allowed.