Firm Sardarilal Vlshwanath And Ors vs Pritam Singh on 14 August, 1978

Equivalent citations: 1978 AIR 1518, 1979 SCR (1) 111

Author: D.A. Desai

Bench: D.A. Desai, Jaswant Singh, A.P. Sen

PETITIONER:
FIRM SARDARILAL VlSHWANATH AND ORS.

Vs.

RESPONDENT:
PRITAM SINGH

DATE OF JUDGMENT14/08/1978

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
SINGH, JASWANT
SEN, A.P. (J)

CITATION:
1978 AIR 1518 1979 SCR (1) 111
1978 SCC (4) 1
CITATOR INFO :
C 1979 SC1745 (18)

ACT:
Transfer of Property Act, S. 106-Whether statutory tenant entitled to notice to quit prior to action in ejectment under Rent Restriction Act.

HEADNOTE:
The appellant firm took the demised premises on lease for a period of 11 months, and after the determination of the lease by efflux of time, it continued in possession and became a statutory tenant. The respondent landlord commenced an ejectment action against it under s. 13of the East Punjab Rent Restriction Act, 1949, without serving a notice to quit. The appellant challenged the maintainability of such action, claiming entitlement to a prior quit notice u/s 106 of the Transfer of Property Act. The claim was rejected

by the High Court.

Dismissing the appeal by special leave, the Court

^

HELD: If the lease of immovable property determines in any one of. the modes prescribed u/s 111 of the Transfer of Property Act and the tenant lessee continues in possession as a statutory tenant under the protective wing of the Rent Restriction Act, there is no question of giving him a fresh notice u/s 106 terminating the contract of tenancy because the contract comes to an end once the lease determines. [120F-H]

Kai Khushroo Bezonjee Capadia v. Bal Jerbai Hijribhoy Warden and Anr., 1949 F.C.R. 262 at 272; followed.

Ganga Dutt Murarka v. Kartik Chandra Das and Ors., [1961] 3 S.C.R. 813; Bhawanji Lakhamshi and Ors. v. Himatlal Jamnadas Dani and Ors. [1972] a S.C.R. 890: Vora Abbasbhai Alimahomed v. Haji Gulamnabi Haji Safiabhai, [1964] 5 SCR 157; Bhaiya Ram v. Mahavir Prasad, 1968 (70) P.L.R. 1011; affirmed.

Mangilal v. Suganchand Rathi [1964] 5 S.C.R. 239; Manujendra Datt v. Purendu Prasad Roy Chowdhury and Ors. 1 [1967] 1 S.C.R. 475; Rawal & Co. v. K. C. Ramachandran and Ors., [1974] 2 S.C.R. 629 at 634; distinguished.

Davies v. Bristow [1920] 3 K.B. 428; Morrison v. Jacobs, [1945] 1 K.B. 577, R. Krishnamurthy v. Parthasarathy, A.I.R. 1949 Madras 780: Ratanlal v. Vardesh Chander [1976] 2 SCR 906; P. V. Rao v. C. V. Ramana [1976] 2 S.C.R. 551; referred to.

Lalitha v. Avisumma, [1977] 2 R.C.R. Vol. 10 690; overruled.

The Judgment of the Court was delivered by

JUDGMENT:

DESAI, J.- The unsuccessful tenant in this appeal by special leave drawing his sustenance from an apparent but unreal conflict amongst certain decisions of this Court as noticed by the Kerala High Court in Lalitha v. Avisumma (1), made a furious attempt to re-open the controversy: whether a statutory tenant is entitled to notice as envisaged (1) [1977] (2) Vol. 10 R.C.R. 690. [Kerala FB] by section 106 of the Transfer of Property Act before an action in ejectment is commenced against him under any of the enabling provisions of the relevant Rent Restriction Act.

Mr. V. C. Mahajan, learned counsel for the appellant canvassed two contentions before us: (1) As the respondent landlord had not terminated the tenancy of the appellant by a notice to quit as contemplated by s. 106 of the Transfer of Property Act, an action in ejectment under section 13 of the East Punjab Rent Restriction Act, 1949 (hor short 'the Act') is not maintainable; (2) Though the landlord sought eviction on the ground that the building was likely to fall down as it was in a dilapidated condition and had become unsafe for human habitation, the very fact that for the last 15 years the building is standing and the tenant is occupying and using it, it would ipso facto negative

the case of the landlord that the building has become unsafe and unfit for human habitation.

The backdrop of facts is this: the tenant, a firm, under two separate rent notes from two separate landlords having specified shares in the demised premises, took on lease the premises and the tenancy commenced from 1st January 1960 and the demise was for a period of 11 months. On the expiry of the period reserved by the lease the tenant continued in possession. If the period reserved under the lease was of 11 months, obviously the lease determined by efflux of time limited thereby as provided in s. 111 (a) of the Transfer of Property Act. Section 116 provides for effect of holding over. If a lessee of property remains in possession thereof after the determination of the lease and the lessor accepts rent from the lessee or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in s. 106. Ordinarily, acceptance of rent from a lessee whose lease determined by efflux of time, would manifest the assent of the lessor to the lessee continuing in possession and in that event the lease would be renewed from year to year or month to month as the case may be, and the lessee would be a lessee holding over. This position which emerged under the provisions of the Transfer of Property Act under went a basic change when the Rent Restriction Act was put on the statute book. The lessor, on the introduction of the Rent Restriction Act could not seek to evict the lessee on the only ground that the lease determined by efflux of time. The lessee was clothed with the protection of Rent Restriction Act. In such a situation the lessor, unless he wanted to proceed under the provisions of the Rent Restriction Act, had no option but to accept the rent and, therefore, acceptance of rent from a lessee clothed with the protection of Rent Restriction Act would not manifest the intention of the lessor to renew the lease. Something more than mere payment and acceptance of rent would be necessary to assert that the lessor has assented to the lessee continuing in possession and the lessor intended the renewal of the lease. Except for the acceptance of rent after the lease determined by efflux of time, nothing was pointed out to us to show that the lessor had otherwise assented to the lessee continuing in possession so as to infer the renewal of lease. Therefore, the lessee in this case is indisputably a statutory tenant and cannot seek any assistance from the provisions contained in s. 116 of the Transfer of Property Act. Mr. Mahajan proceeded to make his submission on the footing that the appellant is a statutory tenant.

If the tenant is thus a statutory tenant enjoying a status of irremovability is he entitled to a notice as envisaged by s. 106 of the Transfer of Property Act before an action for ejectment can be commenced against him under the Act ? Is there any conflict in the decision of this court bearing on the subject ? It would be advantageous to refer to the line of decisions unequivocally asserting that no notice as contemplated by s. 106 of the Transfer of Property Act is necessary before initiating an action in ejectment against a statutory tenant under any of the enabling provisions of the relevant Rent Restriction Act and thereafter we would examine the batch of decisions from which sustenance is sought to be drawn in support of the submission that such a notice is necessary.

In Kai Kushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden & Anr., (1) Mukherjea, J. speaking for the majority, after referring to Davies v. Bristow(2), and Morrison v. Jacobs,(3) has succinctly expressed on this point as under:

"...it may be pointed out that in cases of tenancies relating to dwelling house to which the Rent Restriction Acts apply, the tenant may enjoy a statutory immunity from eviction even after the lease has expired. The landlord can not eject him except on specified grounds mentioned in the Acts themselves. In such circumstances acceptance of rent by the landlord from a statutory tenant, whose lease has already expired, could not be regarded as evidence of a new Agreement of tenancy and it would not be open to such a tenant to urge, by way of defence, in a suit for ejectment (1) [1949] F.C.R. 262 at 272.

(2) [1920] 3 K.B. 428.

(3) [1945] 1 K.B. 577.

brought against him, under the provisions of Rent Restriction Act that by acceptance of rent a fresh tenancy was created which had to be determined by a fresh notice to quit."

It would be refreshing to point out that Patanjali Sastri, J., in his dissenting judgment has not departed from the aforementioned ratio of the judgement, the dissent being confined to interpretation of the facts of the case.

In Ganga Dutt Murarka v. Kartika Chandra Das & ors.(1) Shah, J., after affirming the aforementioned quotation, observed that occupation of premises by a tenant whose tenancy is determined is by virtue of protection granted by the successive statutes and not because of any right arising from the contract which is determined. The statute protects his possession so long as the conditions which justify a lessor in obtaining an order of eviction against him do not exist. Once the prohibition against the exercise of jurisdiction by the Court is removed, the right to obtain possession by the lessor under the ordinary law springs into action and the exercise of the lessor's right to evict the tenant will not, unless the statute provides otherwise, be conditioned. Such occupation would not confer any rights upon the appellant and would not be required to be determined by a notice prescribed by s. 106, Transfer of Property Act.

In Bhawanji Lakhamshi & ors. v. Himatlal Jamnadas Dani & ors.(2), the ratio in K. B. Capadia (supra), Ganga Dutt Murarka (supra) was reaffirmed.

A contrary view, according to Mr. Mahajan, is expressed in Mangilal v. Suganchand Rathi(3). The contention before the Constitution Bench in that case was that the provisions of the Madhya Pradesh Accommodation Control Act, 1955, do not supplant but supplement the provisions of the Transfer of Property Act and that, therefore, before a tenant can be evicted by the landlord, he must comply both with the provisions of s. 106 of the Transfer of Property Act and those of s. 4 of the Accommodation Act. The controversy was whether the M.P. Accommodation Control Act was a complete code providing for its own procedure and forum for taking action under it or its provisions have to be reconciled with the provisions of the Transfer of Property Act. An analytical examination of this judgment would show that it does not express a contrary view as canvassed on behalf of the appellant. The tenant in (1) [1961] 3 S.C.R. 813.

(2) [1972] 2 S.C.R. 890.

(3) [1964] 5 S.C.R. 239.

that case was in arrears for a period of 12 months and he was served with a notice requiring him to remit the amount in arrears within one month from the date of service of notice further stating that on his failure to do so a suit for ejectment would be filed against him. The tenant replied to the notice and sent the rent in arrears as well as the rent due right up to June 30, 1959. The landlord accepted the cheque and encashed it on July 4, 1959, and gave a fresh notice on July 9, 1959, requiring the defendant to vacate the premises by the end of the month of July. Nowhere it was contended before the Court that the tenant was a statutory tenant and the action in ejectment was commenced under one of the enabling provisions of the Accommodation Act, and, therefore, not entitled to notice under s. 106 of the Transfer of Property Act. On the contrary it was contended that by acceptance of the rent the notice is waived and negativing this contention it was held that the defendant having been under liability to pay rent even after the giving of notice the acceptance of the rent by the plaintiffs would not by itself operate as waiver. The point raised herein was entirely and materially different from what is contended before us. The contractual tenancy was determined by a notice to quit and `the rent was accepted under protest and immediately an action in ejectment was initiated. The landlord did not dispute that the tenant was not entitled to notice. It could not, therefore, be said that a contrary view was expressed in this decision.

In Manujendra Dutt v. Purendu Prosad Roy Chowdhury & Ors.,(1) the Court was concerned with a case under the Calcutta Thika Tenancy Act, 1949, and the contention was that before action in ejectment could be commenced against the defendant, a notice of six months' duration as contemplated by s. 106 of the Transfer of Property Act should have been served upon him. The factual matrix of the case as disclosed in clause (7) of the lease clearly reveals that the tenant was entitled to notice of six months' duration at the end of the term of 10 years, the period reserved under the lease, and it further provided that if the lessee was permitted to holdover the land after the expiry of the said term of 10 years, the lessee will be allowed a six months' notice to quit the, said premises. In the background of these relevant facts it was held that a statutory tenancy comes into existence where a contractual tenant retains possession after the contract has been determined. The right to hold over, i.e. the right of irremovability thus is a right which comes into existence after the expiration of the lease and until the lease is (1) [1967] 1 S.C.R. 475.

terminated or expires by efflux of the time the tenant need not seek protection under the Rent Act. For, he is protected by his lease in breach of which he cannot be evicted. Mangilal's case (supra) was referred to support the proposition that before a tenant could be evicted by a landlord he must comply both with the provisions of s. 106, Transfer of Property Act and those of s. 4 of the Madhya Pradesh Accommodation Control Act. The Court negatived the contention that the Madhya Pradesh Accommodation Control Act or for that matter the Calcutta Thika Tenancy Act each by itself was a complete Code with its own scheme of procedure and, there fore, an action under one or the other would not be governed by Transfer of Property Act, and in the process overruled the decision in R. Krishnamurthy v. Parthasarathy, (1) wherein it was held that s. 7 of the Madras Buildings (Lease and Rent Control) Act had its own procedure and scheme and, therefore, there was no question of an

attempt to reconcile that Act with the Transfer of Property Act. It would be advantageous to note here that this observation has been adversely commented upon in a later decision of the Constitution Bench of this Court in Raval & Co. v. K. C. Ramachandran & ors.,(2) where Alagiriswami, J. speaking for the majority observed that the decision of the Madras High Court in R. Krishnamurthy's case should not have been summarily dismissed on the ground that it was Contrary to the decision of this Court in Abbasbhai's (3) case and Mangilal's case (supra) and, therefore, was not a correct law without examining the provisions of that Act. The controversy brought before the Court in this case was whether the provision of the relevant Rent Restriction Act was in addition to the provision of the Transfer of Property Act or was in derogation thereof. In other words, whether it would supplement or supplant the same. Such a contention is entirely and materially different from the contention raised before us that a notice terminating the tenancy is necessary to be served upon a statutory tenant before commencing an action against him under any of the provisions of the Rent Restriction Act. Undoubtedly, the Court held in Manujendra Dutt's case (supra), as under:

> "The Thika Tenancy Act like similar Rent Acts passed in different States is intended to prevent indiscriminate eviction of tenants and is intended to be a protective statute to safeguard security of possession of tenants and therefore should be construed in the light of its being a social legislation. What section 3 therefore does is to provide that (1) A.I.R. 1949 Madras 780.
>
> (2) [1974] 2 S.C.R. 679 at 634.
>
> (3) [1964] 5 S.C.R.. 157.

even where a landlord has terminated the contractual tenancy by a proper notice such landlord can succeed in evicting his tenant provided that he falls under one or more of the clauses of that section. The word "notwithstanding" in section 3 on a true construction therefore means that even where the contractual tenancy is properly terminated, notwithstanding the landlord's right to possession under the Transfer of Property Act or the contract of lease he cannot evict the tenant unless he, satisfied any one of the grounds set out in section 3. Rent Acts are not ordinarily intended to interfere with contractual leases and are Acts for the protection of tenants and are consequently restrictive and not enabling, conferring no new rights of action but restricting the existing rights either under the contract or under the general law". It must be specifically pointed out that the emphasis in Manujendra's case is that contractual tenancy has to be terminated by a notice before an action for ejectment can be commenced under the Thika Tenancy Act and notwithstanding the non-obstante clause in s. 3 of the Act, the tenant cannot be deprived of his right to a notice before termination of his tenancy if he has such a right either under the lease or under the Transfer of Property Act. The decision ultimately turns upon the interpretation of clause (7) of the Lease which made it obligatory upon the landlord to serve a notice of six months' duration either at the time of expiration of the lease or if the lessee was allowed to hold over, at any time before commencing the action for ejectment. We must frankly say that the ratio in this decision, does not run counter to the ratio in Capadia's case (supra) and the decisions in which that ratio was affirmed.

In Raval & Co.'s case (supra), the question raised before the Court was whether under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, it was open to, the landlord to move the Controller for fixation of fair rent during the subsistence of the contractual tenancy. This decision would hardly assist us in resolving the controversy raised before us. Though R. Krishnamurthy's case was expressly overruled in Manujendra Dutt's case (supra) and held not to be correct law by this Court, the majority view as expressed by Alagiriswami, J in Raval & Co.'s case (supra) deprecated its summary dismissal without examining the provisions of the Act. That apart, the majority view is that even during the subsistence of contractual tenancy the landlord can apply to the Controller for fixation of fair rent on the footing that the' Act has a scheme of its own and it is intended to provide a complete code in respect of both contractual tenancies and statutory tenancies. This would indicate that the Act was supposed to supplant and not to supplement the Transfer of Property Act. But that conclusion would not throw any light on the point under discussion here.

In Ratanlal v. Vardesh Chander,(1) the tenant moved this Court challenging a decree for eviction under the Delhi Rent Control Act, 1958, inter alia, contending that a notice terminating his tenancy was not served upon him before commencing the action for his eviction and the landlord sought to break through the defence by urging that the lease had expired by efflux of time limited thereby under s. 111

(a) and no notice terminating the tenancy under s. 106 is needed and further that forfeiture of the tenancy caused by the subletting contrary to the terms of the agreement can be availed of by the landlord even in the absence of a notice as contemplated by s. 111 (g). This decision will have to be examined in greater detail because it was emphatically urged that this decision takes a contrary view. The most important factual aspect which must immediately engage our attention is that the Court in that case found that the lease merely stating that " it is for a period less than one, year is ex facie for ar indefinite period and as such cannot expire by efflux of time". Now, if the Court came to the conclusion that the lease had not expired by efflux of time and the lease was held to be for an indefinite period, the contractual tenancy never came to an end and in Such a situation s. 106 of the Transfer of Property Act would be attract ed unless there is a contract to the contrary and a notice to quit is a must before an action for ejectment can be started. Therefore, it becomes abundantly clear that in Ratanlal's case no question was raised whether a statutory tenant is entitled to a notice under s. 106 of the Transfer of Property Act. In fact this decision supports the view that no such notice is necessary and this becomes abundantly clear from what we quote hereunder:

> "A lease merely stating that it is for a period less than one year is ex facie for an indefinite period and, as such, cannot expire by efflux of time. Nor are we convinced that, notwithstanding the acceptance of rent for the period of 11 years the landlord had not assented to the holding over of the tenancy and that what emerged was a statutory tenancy which did not require notice in law for valid determination. Possibly so; not necessarily. However, we, need not explore this aspect further in the view that we take of the other submission of the landlord that the lease has been (1) [1976] 2 S.C.R. 906.

determined by forfeiture, not in terms of s. 111(g) of the TP Act, but on the application of the principles of justice, equity and good conscience".

It is manifestly clear that the Court did not lay down a proposition that a notice to quit is necessary before commencing an action against a statutory tenant under any of the enabling provisions of the Rent Restriction Act. On the contrary, apparently the view that such a notice is not necessary is affirmed and simultaneously a doubt is reflected in saying that the aspect may not be explored any more. However, it cannot be said that Ratanlal's case is an authority for the proposition that a notice under s. 106, Transfer of Property Act must be served before initiating an action for ejectment against a statutory tenant. We may point out that the Court having not been seized of such a point, has not referred to K. B. Capadia's case (supra) and Ganga Dutt Murarka's case (supra).

In P. V. Rao v. C. V. Ramana,(1) to which one of our esteemed brother, Jaswant Singh, J. was a party, it has been held that the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, is a complete code with its own scheme of procedure. In reaching this conclusion the Court distinguished Mangilal's case (supra) .

Analysing the position it clearly emerges that the ratio in K. B. Capadia's case that where the lease determines by efflux of time and the tenant continues in possession under the protection of the Rent Restriction Act he acquires a status of irremovability unless there is something to show that he is a tenant holding over, mere payment of rent without necessary animus not being sufficient. Such a tenant for the; sake of convenience is described as a statutory tenant. It would not be open to such a tenant to urge by way of defence, in a suit for ejectment brought against him under the provisions of the Rent Restriction Act, that by acceptance of rent a fresh tenancy was created which had lo be determined by a fresh notice to quit. This ratio is neither departed from nor controverted in any subsequent judgment of this Court.

A Full Bench of the Punjab & Haryana High Court in Bhaiya Ram v. Mahavir Prasad (2), after referring to the aforementioned decisions except the one in K. B. Capadia's case (supra) and a number of other decisions of various High Courts, answered in the affirmative the question referred to it, viz., whether an ejectment application under (1) [1976] 2 S.C.R. 551.

(2) 1968 [70] The Punjab Law Reporter 1011.

s. 13 of the East Punjab Urban Rent Restriction Act can be filed against a statutory tenant without the prior issue of notice under s. 106 of the Transfer of Property Act, 1882. We are of the opinion that this decision represents the correct law on the subjects.

The Kerala High Court in Lalitha's case (supra) observed that it is difficult to resist the impression or conclusion that the decisions in Manujendra Dutt's case (supra), Mangilal's case (supra) and Ratanlal's case (supra) do not conflict with each other. A closer reading of all the decisions as attempted by us would clearly show that these decisions are not irreconcilable and each has to be understood in the context of the points and questions raised in it and the background of factual matrix. Suffice it to say that on the question under discussion there is no conflict and, therefore, the

decision in K. B. Capadia's case is binding and must be given effect. Consistent with its ratio, the contention of Mr. Mahajan that the action for ejectment against the appellant tenant under s. 13 of the East Punjab Urban Rent Restriction Act must fail for want of notice under s. 106 of the Transfer of Property Act, must be negatived.

Having examined the matter on authority and precedent it must be frankly confessed that no other conclusion is possible on the first principle. Lease of urban immovable property represents a con tract between the lessor and the lessee. If the contract is to be put to an end it has to be terminated by a notice to quit as envisaged under s. 106 of the Transfer of Property Act. But it is equally clear as provided by 1,. 111 of the Transfer of Property Act that the lease of immovable property determines by various modes therein described. Now, if the lease of immovable property determines in any one of the modes prescribed under s.]11, the contract of lease comes to an end, and the landlord can exercise his right of re-entry. This right of re-entry is further restricted and fettered by the provisions of the Rent Restriction Act. Nonetheless the contract of lease has expired and the tenant lessee continues in possession under the protective wing of the Rent Restriction Act until the lessee loses protection. But there is no question of terminating the contract because the contract comes to an end once the lease determines in any one of the modes prescribed under s. 111. There is, therefore, no question of giving a notice to quit to such a lessee who continued in possession after the determination of the lease, i.e. after the contract came to an end under the protection of the Rent Restriction Act. If the contract once came to an end there was no question of terminating the contract over again by a fresh notice. Therefore, both on principle and authority the contention of Mr. Mahajan cannot be accepted.

The second contention requires re-examination of the findings of fact which this Court ordinarily in appeal by special leave would not undertake. After one remand by the first appellate authority, all the Courts have concurrently found that the building is in a dilapidated condition and unfit for human habitation and requires to be constructed. Mr. Mahajan made a cryptic submission that even after the lapse of 15 years during which this protracted litigation has moved from court to Court, the building stands erect and the tenant has used it for the purpose for which it was let out and, therefore, this Court would be shutting its eyes to the reality if it affirms the decree for eviction on the ground that the building is unfit for human habitation. It appears that the tenant has been carrying out some minor repairs to keep the building standing and that he seems to be doing in his own interest. The finding, however, is that the eastern wall of the building is altogether out of plumb and it cannot be repaired or replaced without the building being vacated by the tenant. The roof of the building is also uneven and that too cannot be set right without eviction. These are findings supported by evidence and once they are accepted, the decree for eviction deserves to be affirmed.

Accordingly this appeal fails and it is dismissed but in the circumstances of the case there will be no order as to costs.

M.R. Appeal Dismissed
9-520 SCI/78