Supreme Court of India
Parripati Chandrasekharrao And ... vs Alapati Jalaiah on 26 April, 1995
Bench: P.B. Sawant, S.B. Majmudar

CASE NO.:
Appeal (civil) 5479-81 of 1993

PETITIONER:
PARRIPATI CHANDRASEKHARRAO AND SONS

RESPONDENT:
ALAPATI JALAIAH

DATE OF JUDGMENT: 26/04/1995

BENCH:
P.B. SAWANT & S.B. MAJMUDAR

JUDGMENT:

JUDGMENT 1995 (3) SCR 817 The Judgment of the Court was delivered by SAWANT, J. The short question which falls for consideration in the present appeal is whether on the coming into operation of the notification on 26th October, 1983 issued by the State Government in exercise of the powers conferred upon it under Section 26 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter referred to as the "Act"), the three applications made by the tenant for relief under the Act survive or not.

The relevant facts are that the suit premises were governed by the Act till 29th December, 1983. On 4th February, 1983 and 13th February, 1983, the respondent-tenant filed variously three applications, viz., (i) R.C.15/83 for direction to permit him to deposit rent in the court (ii) R.C. 16/83 for fixation of fair rent and (iii) R.C. 17/83 to prevent inconvenience. The State Government issued notification dated 29th December, 1983 exempting w.e.f. 26th October, 1983 from all the provisions of the Act, among others, buildings whose monthly rent exceeded Rs. 1,000. The definition of the 'building' under the Act includes any tenanted premises and hence the suit premises stood exempted from the operation of the Act w.e.f. 26th October, 1983 since on the said date the monthly rent payable in respect of the premises was Rs. 1,300.

The Rent Controller dismissed the tenant's applications by his order of 6th April, 1985 on the ground that the rent of the premises being in excess of Rs. 1,000 he had no jurisdiction to entertain and decide the applications after 26th October, 1983. Against the said decision, the tenant preferred three appeals in the three applications to the Subordinate Judge. The appeals were dismissed upholding the decision of the Rent Controller. Against the decision in appeal, the tenant preferred three revision petitions, viz., C.R.P. Nos. 624, 831 and 1043/91 in the High Court and the High Court by the impugned decision allowed the said petitions holding that the Rent Controller had jurisdiction to entertain and decide the applications since the notification in question did not apply to the pending proceedings.

2. It appears that while the tenant's appeals were pending before the Subordinate Judge, he had preferred a writ petition being W.P. No, 8081/86 in the High Court challenging the validity of clause (b) of the said notification which states that the buildings fetching monthly rent exceeding Rs 1,000 stood exempted from the provisions of the Act. The learned Single Judge of the High Court dismissed the writ petition upholding the validity of the said provisions. The tenant preferred a writ appeal which also met the same fate. Against the decision in the writ appeal, the tenant preferred special leave petition in this Court which was dismissed summarily at the admission stage without a speaking order.

Shri Sitaramiah, learned counsel appearing for the appellant-landlord contended that on the coming into operation of the said notification from the 26th October, 1983, the protection given to the tenant stood withdrawn and, therefore, whatever rights he had under the provisions of the Act, stood extinguished on and from the said date. As against this, it was contended by Shri Subba Rao for the tenant that the tenant had acquired vested rights under the Act and they were alive when the applications were made and he could not be divested of the same by the Notification which came into operation from a subsequent date, as held by the Division Bench of the High Court.

In support of his contention, the learned counsel for the landlord relied upon, among others, the following decisions of this Court. The first of the decision is D.C. Bhatia & Ors., v. Union of India & Anr.,[l995] 1 SCC 104 where a three-Judge Bench of this Court disposed of several appeals arising out of an amendment of the Delhi Rent Control Act whereby Section 3 (c) was introduced in the said Act withdrawing the protection of that Act to such premises whose rent was Rs. 3,500 per month or Rs. 42,000 per annum or above. One of the contentions advanced there on behalf of the tenants was that the amendment in question came into force on 1st December, 1988 and, therefore, it would not apply to those tenancies which were created prior to the said date. It was urged that the amendment was not specifically made retrospective and hence it could not affect the rights of the tenants already acquired under the said Act. Repelling these contentions, this Court held as follows :

"52. We are unable to uphold this contention for a number of reasons. Prior to the enactment of the Rent Control Act by the various State Legislatures, the legal relationship between the landlord and tenant was governed by the provisions of the Transfer of Property Act. Delhi Rent Control Act provided protection to the tenant from drastic enhancement of rent by the landlord as well as eviction, except on certain specific grounds. The legislature by the Amendment Act No. 57 of 1988 has partially repealed the Delhi Rent Control Act. This is a case of express repeal. By Amending Act the legislature has withdrawn the protection hither-to enjoyed by the tenants who were paying Rs. 3,500 or above as monthly rent. If the tenants were sought to be evicted prior to the amendment of the Act, they could have taken advantage of the provisions of the Act to resist such eviction by the landlord. But this was nothing more than a right to take advantage of the enactment. The tenant enjoyed statutory protection as long as the statute remained in force and was applicable to him. If the statute ceases to be operative, the tenant cannot claim to continue to have the old statutory protection. It was observed by Tindal, C J. in the case of Kay v. Goodwin, [1830] 6 Bing 576: 130 ER 1403 at 1405.

"The effect of repealing a statute is to obliterate it as completely from the records of the Parliament as if it had never been passed; and, it must be considered as a law that never existed, except for the purpose of those actions which were commenced, prosecuted, and concluded whilst it was an existing law."

"53. The provisions of a repealed statute cannot be relied upon after it has been repealed. But, what has been acquired under the Repealed Act cannot be disturbed. But, if any new or further step is needed to be taken under the Act, that cannot be taken even after the Act is repealed."

"54. In the case of Kewal Singh v. Lajwanti, vires of Section 25-B of the Delhi Rent Control Act was challenged. Section 25-B was inserted to provide the landlord with a speedy remedy of eviction in case of bona fide necessity of the landlord. A contention was raised on behalf of the tenants that the provisions of Section 25-B violated Article 14 of the Constitution. Fazal Ali, J., speaking on behalf of the Court, repelled this argument by observing (SCC p.303, para 21) "Thus any right that the tenant possessed after the expiry of the lease was conferred on him only by virtue of the Rent Control Act. It is, therefore, manifest that if the legislature considered in its wisdom to confer certain rights or facilities on the tenants, it could due to changed circumstances curtail, modify, alter or even take away such rights or the procedure enacted for the purpose of eviction and leave the tenants to seek their remedy under the common law."

"55. In the instant case the legislature has decided to curtail or take away the protection of the Delhi Rent Control Act from a section of the tenants. The tenants had not acquired any vested right under the Delhi Rent Control Act, but had a right to take ad-vantage of the provisions of the repealed Act so long as that law remained in force." (emphasis ours) "56. In the case of Mohinder Kumar v. State of Haryana, the validity of the Amending Act of 1978 by which Haryana Urban (Control of Rent and Eviction) Act, 1973, was amended was challenged. The Amending Act by which a category of newly constructed buildings were exempted from the provisions of the Act for a period of ten years, was challenged, inter alia, on the ground that the provisions operated retrospectively and sought to take away the vested rights of the tenants under the Act. This contention was repelled by this Court in the following words : (SCC p.231, para 17) "The argument that the tenants have acquired a vested right under the Act prior to its amendment is without any substance. Prior to the amendment of Section 1(3) by the Amending Act of 1978, the provision as it originally stood cannot be said to have conferred any vested right on the tenants. The provision, as it originally stood prior to its amendment, might not have been constitutionally valid as the exemption, sought to be granted was for an indefinite period. That does not necessarily imply that any vested right in any tenant was thereby created. The right claimed is the right to be governed by the Act prior to its amendment. If the Legislature had thought it fit to repeal the entire Act, could the tenant have claimed any such right? Obviously, they could not have; the question of acquiring any vested rights really does not arise." (emphasis ours) "58. The last contention was as to whether the term 'rent' is to be construed as "standard rent" and not as the rent which is actually being paid. This argument is also not acceptable for a number of reasons. Firstly, the legislature has not used the expression 'stand-ard rent' in clause (c) of Section 3. Words normally should be understood in the ordinary dictionary meaning."

"60. It had been contended on behalf of the tenants that unless 'standard rent' was determined in accordance with the provisions of Section 6 of the Act, the provisions of Section 3(c) could not be made applicable. There is nothing in the wording of Section 3(c) to support this contention. Section 3(c) speaks of premises 'whose monthly rent exceeds three thousand and five hundred rupees'."

It, however, appears that in the judgment under appeal in that case it had been held that the provisions of the said section 3(c) could not be applicable to the cases which were pending before the Court. Since no arguments were advanced on that point by any of the parties before this Court, the Court made it clear that it was not expressing any opinion on the said controversy.

The next decision is reported in [1964] 6 SCR 876 in Rafiquennessa v. Lal Bahadur Chetri (dead) through His representatives & Ors. In that case the appellant sued the lessee, the predecessor of the respondent for ejectment on the latter's failure to deliver possession of a leased land at the expiration of the stipulated period. Under the covenant, the lessee was entitled to build a house for residential purposes. The Trial Court decreed the appellant's claim whereupon the lessee filed an appeal. While it was pending, the Assam Non-Agricultural Urban Areas Tenancy Act was passed, and thereafter the lessee prayed for permission to take an additional ground under Section 5 of that Act. Before that date, the High Court had taken the view that the said provision of the Act was applicable to pending proceedings. The lower appellate court allowed the lessee's plea and ultimately allowed the appeal and set aside the decree concluding that the two houses had been constructed by the lessee within five years after taking of the lease and that entitled the lessee to claim the benefit of Section 5 of the Act. The High Court on appeal, following its earlier decision summarily dismissed the appeal. In the appeal filed to this Court, the Court held that (i) the statutory provision is retroactive either when it is so declared by the expressed terms or the intention to make retroactive clearly follows from the relevant words and the context in which they occur and (ii) the provisions of the Act clearly indicate that the legislature wanted the beneficent provisions enacted by it to take within their protection not" only leases executed after the Act came into force, but also leases executed prior to the operation of the Act. The plain object of Section 5 was to protect the tenants who had built a permanent structure either for business or for residence, provided it had been built within five years from the date of the contract of tenancy, even though the construction had been made before the date of the Act. (iii) A suit which was pending when the Act came into force would be governed by Section 5(1) (a) of the Act. An appeal likewise would be governed by the said Section provided it was pending after the date, when the act came into force the appeal pending being a continuation of the suit.

The learned counsel for the landlord also sought to derive support to his contention from a decision of this Court in [1995] 1 SCR 410 Super Forgings & Steels (Sales) Pvt. Ltd. v. Thyabalfy Rasuljee (dead) through Lrs. According to us, the said decision is not apt for supporting his submissions since it relied upon the developments between the parties during the pendency of the proceedings in this court for its conclusion that the said developments could be taken into consideration for the decision in that matter.

As against this, the learned counsel for the tenant relied upon the decision of this Court reported in [1988] Supp. 2 SCR 528 Atma Ram Mittal v. Ishwar Singh Punia. In that case, the

appellant-landlord had 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 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 years had expired by June 1984 in terms of Section 1(3) of the Act and as such the immunity from the application of the Act had expired. Hence the suit was not maintainable and the jurisdiction of the civil court was barred. On these facts this Court held :

"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 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."

On this finding this Court set aside the decision of the High Court which had taken the view that the proceedings filed by the landlord had come to an end on the expiry of the period of 10 years from the date of the construction of the premises in question.

Relying on the aforesaid observations and the finding, the learned counsel of the tenant urged that on the same analogy applications filed by the tenant would also survive notwithstanding the coming into operation of the Notification in question since the applications were pending in the court on that date.

According to us there is a material difference between the rights which accrue to a landlord under the common law and the protection which is afforded to the tenant by such legislation as the Act. In the former case the rights and remedies of the landlord and tenant are governed by the law of contract and the law governing the property relations. These rights and remedies continue to govern their relationship unless they are regulated by such protective legislation as the present Act in which case the said rights and remedies remain suspended till the protective legislation continues in operation. Hence while it can legitimately be said that the landlords' normal rights vested in him by the general law continue to exist till and so long as they are not abridged by a special protective legislation in the case of the tenant, the protective shield extended to him survives only so long as and to the extent the special legislation operates. In the case of the tenant therefore the protection does not create any vested right which can operate beyond the period of protection or during the period the protection is not in existence. When the protection does not exist, the normal relations of the landlord and tenant come into operation. Hence the theory of the vested right which may validly

be pleaded to support the landlords' case is not available to the tenant. It is for this reason that the analogy sought to be drawn by Shri Subbarao between the landlord's and the tenant's rights relying upon the decision of this Court in (1988) Suppl. 2 SCR is misplaced. In that case the landlord's normal right to evict the tenant from the premises was not interfered with for the first ten years of the construction of the premises by an exemption specifically incorporated in the protective Rent legislation in question. The normal right was obviously the tested right under the general law and once accrued it continued to operate. The protection given to the tenant by the Rent legislation came into operation after the expiry of the period of 10 years. Hence, notwithstanding the coming into operation of the protection and in the absence of the provisions to the contrary, the proceedings already commenced on the basis of the vested right could not be defeated by mere passage of tune consumed by the said proceedings. It is for this reason that the Court there held that the right which had accrued to the landlord being a vested right could not be denied to him by the efflux of time.

That is not the situation in the present case where the tenant who undoubtedly had the rights and remedies under the Act to claim reliefs against landlord, lost the same the moment the protection was taken away, the rights and remedies being not vested ones.

In this view of the matter, we are of the view that the view taken both by the Rent Controller and the Appellate Court was right and the decision of the High Court is not correct. Hence, set aside the impugned decision of the High Court and allow the appeals. As a result, the applications filed by the respondent- tenant before the Rent Controller will stand dismissed.

Appeals allowed.