

Patna High Court

Guru Prasad vs Sadhu Sharan Prasad on 7 May, 1991

Equivalent citations: 1992 (1) BLJR 56

Bench: B Basak, S Roy, L Shahdeo

JUDGMENT B.C. Basak, C.J., S. Roy and L.P.N. Shahdeo, JJ.

1. This reference to a larger Bench was made in view of the order of a Division Bench of this Court dated 5-4-1990.

2. The short facts of the case are as follows: The plaintiff filed a suit in the year 1974 for a decree of eviction of the defendant, inter alia, on the ground that the lease expired on 39th April, 1973 and the period of notice under Section 106 of the Transfer of Property Act had also expired. The suit premises is located at Garhwa in the district of Palatum at the relevant time, the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (for short 'the 1917 Act') as extended from time to time was in force, 1947 Act did not apply to Garhwa. The Act was replaced by 1977 Act with effect from 1st April, 1976, 1977 Act also did not apply to Garhwa. On 20th November, 1979 the suit was decreed by the trial court in favour the plaintiff landlord 1977 Act was replaced by the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 {for short 4982 Act') with effect from 1st April, 1981, 1982 Act was made applicable to the whole of State of Bihar. On 31st March, 1982 the appeal preferred by the tenant was dismissed. Thereafter the present second appeal was filed by the tenant.

3. Section 11(1) of 1982 Act provides as follows:

Section 11(1)--Notwithstanding anything contained in any contract or law to the contrary, but subject to the provisions of the Industrial Disputes Act, 1947, and to those of Section 18 of cue Act, where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the court on one or more of the grounds specified in Section 11(1)(a) to (f).

4. The question before the learned Judges of the Division Bench was as to whether it can be said that the provisions of Section 11 of the said Act applied in the facts and circumstances of this case. The learned Judges considered the case of Madhya Pradesh High Court reported in 1955 JLJ (SN 76), Punjab & Haryana High Court 1975 RCJ (SN 31), Karnataka High Court in 1975 RCJ (SN 34) and 1974 RCJ 87. It also referred to a decision of the Full Bench of the Allahabad High Court wherein it was held that with the extension of the Rent Act to a new area, the benefit of defence would also be available to the tenants in a pending litigation whether it is at the stage of suit, appeal or a revision. The learned Judges of the Division Bench held that there is a sharp divergence of judicial opinion as to whether such provision in the Rent Act would apply to a pending litigation whether at the stage of suit, appeal or revision.

5. The learned Judges of the Division Bench also made a passing reference to the decisions of the Supreme Court reported in Lakshmi Narain Guin v. Niranjana Modak ; Nand Kishore Marwah v. Samundari Devi , and Ghanshyam Das Gupta v. Devi Lal and Ors. (1990) 1 SCC 455, corresponding to (1990) 1 PLJR 11 (SC), but did not consider or discuss the same and only observed that--"The

legal position to us does not appear to be very clear." In our opinion, in view of the decisions of the Supreme Court particularly the case of Lakshmi Narain v. Niranjan Modak (supra) the question involved in the present case stands concluded by the decision of the Supreme Court in that case. In that case, the appellants before the Supreme Court filed the suit claiming that the respondents were in arrear of rent which they refused to pay despite demand. The suit was resisted by the tenants on certain grounds. The suit was decreed by the learned trial court and the appeal filed by the respondents was dismissed by the first appellate court. The second appeal, however, was allowed by the High Court by judgment and decree dated 28th January, 1976. The High Court held that by virtue of the West Bengal Premises Tenancy Act, 1956 (for short 'West Bengal Act') being extended to Memari during the pendency of the first appeal, the first appellate court was bound to take into account the change of law and to extend its benefits to the tenant and consequently to set aside the decree of the trial court and dismiss the suit.

6. The Supreme Court referred to Sub-section (1) of Section 13 of the West Bengal Act, as extended to Memari during the pendency of the first appeal which provides that notwithstanding to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the grounds, which is similar to Bihar Act. In this context, the Supreme Court further observed as follows:

It is well-settled that when a trial court decrees a suit and the decree is challenged by a competent appeal, the appeal is considered as a continuation of the suit and when the appellate decree affirms, modifies or reverses the decree on the merits, the trial court decree is said in law to merge in the appellate decree, and it is the appellate decree which rules. The object of Sub-section (1) of Section 15 is to protect the possession of the tenant, subject to the exceptions specified in the subsection, and that protection is ensured if we construe the sub-section to mean that, subject to those exceptions, no effective or operative order or decree can be made by the Court in a landlord's suit for possession against a tenant. To our mind, therefore, Sub-section (1) of Section 13 of the Act can be invoked by a tenant during the pendency of an appeal against a trial court decree.

7. The Supreme Court further considered whether the said section could be invoked whether the suit was instituted before the Act came into force, it has held that the suit was instituted long before the Act was extended to Memari. It has observed that Sub-section (1) of Section 13 directs the court not to make any order or decree for possession, subject, of course, to the statutory exceptions. The legislative command in effect deprives the Court of its unqualified jurisdiction to make such order or decree. It was pointed out that it is true that when the suit was instituted, the Court possessed such jurisdiction and could pass the decree for possession, but it was divested of that jurisdiction when the Act was brought into force. In this context, the Supreme Court also observed that a change in the law during the pendency of an appeal has to be taken into account and will govern the rights of the parties. In this context, the Supreme Court referred to various decisions.

8. We may notice that the Division Bench in its order of reference observed that the question was whether a person who was not a tenant on the date of institution of the litigation within the meaning, of the Rent Act, would become a tenant under the said Act only because the Act has come into force during the pendency of the litigation.

9. The definition of word 'tenant' in Section 2(h) of 1982 Act includes a person continuing in possession after the termination of his tenancy in his favour. In this case, the appellant continued in possession of the building after the termination of his tenancy. He is, therefore, a tenant within the definition of tenant in 1982 Act. We may notice that the definition of tenant in Section 2(h) of the West Bengal Act includes any person continuing in possession after the termination of his tenancy.

10. In our opinion, the decision in Lakshmi Narain Guin (*supra*) is complete answer to the points raised in this case and the Division Bench should have followed the law laid down by the Supreme Court.

11. Though it is not necessary to refer to any other case, we shall also refer to the two other decisions referred to by the Division Bench while referring this matter to a larger Bench, The said two decisions also though noted but were not considered by the Division Bench. In the case of Nand Kishore Marwah (*supra*), the provisions of U.P. Urban Buildings Regulation of Letting, Rent and Eviction) Act, 1972 were under consideration. New buildings are exempted from the operation of the Act for ten years from the date the completion of the building is reported to or recorded by the local authority. During the pendency of the case in High Court 10 years elapsed. Tenant took the plea, that as 10 years have elapsed, he was protected under Section 20 of the Act. Landlord took the plea that as the suit itself had been filed long before expiry of 10 years, the tenant cannot claim protection under the Act. It was held by the Supreme Court that:

...that the restriction put under Section 20 to the institution of the suit itself and, therefore, it is clear that if the provision of the Act applies then no suit for eviction can be instituted except on the grounds specified in the sub-sections of this section. Keeping in view the language of Section 20 if we examine the Provisions contained in Sub-section (2) of Section 2, it will be clear that for a newly constructed building the provisions of the Act will not apply for 10 years and, therefore, so far as the restriction under Section 20 is concerned that will not apply and, therefore, it is clear that within 10 years as provided for in Clause (2) of Section 2 restriction on the institution of suit as provided for in Section 20, Clause (1) quoted above will not be applicable and it is thus clear that during the pendency of the litigation even if 10 years expired, the restriction will not be attracted as the suit has been instituted within 10 years and, therefore, restriction as provided for in Section 20 cannot be attracted.

12. In our opinion, the law laid down by the Supreme Court is very clear. Further, in our opinion, the case of Ghanshyam Das Gupta v. Derilan and Ors. 1990 (1) PLJR 11 (SC) has no application. In that case, it was held that the extension of the Bihar Rent Act to the Cantonment Area cannot be held to be applicable with retrospective effect in view of Sub-sections (2) and (4) of Section 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957. It is clear that the facts and the law in this case are completely different and that they have no application in the present case.

13. Accordingly, we are of the opinion that the law has been clearly laid down by the Supreme Court. We hold that 1982 Act applies to the facts of this case, though the suit was decreed earlier and though this Act came into force during the pendency of the appeal. Accordingly, no decree for eviction of the appellant could be passed.

14. In that view of the matter, we allow this appeal, set aside the judgment and decree passed by the courts below and dismiss the suit but with out cost.