

Supreme Court of India

Jain Ink Manufacturing Company vs Life Insurance Corporation Of ... on 22 August, 1980

Equivalent citations: 1981 AIR 670, 1981 SCR (1) 498

Author: S M Fazalali

Bench: Fazalali, Syed Murtaza

PETITIONER:

JAIN INK MANUFACTURING COMPANY

Vs.

RESPONDENT:

LIFE INSURANCE CORPORATION OF INDIA & ANR.

DATE OF JUDGMENT 22/08/1980

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

CHANDRACHUD, Y.V. ((CJ)

KOSHAL, A.D.

CITATION:

1981 AIR 670 1981 SCR (1) 498

1980 SCC (4) 435

CITATOR INFO :

D 1988 SC1708 (23)

RF 1991 SC 855 (45)

ACT:

Public Premises (Eviction of Unauthorised occupants) Act, 1971, S. 2(2)(g)- Unauthorised occupation of public premises-Tenant in possession before the premises became public premises-Eviction whether can be ordered under the Act.

Public Premises (Eviction of Unauthorised occupants) Act, 1971, Delhi Rent Control Act, 1958 (59 of 1958) & Slum Areas (Improvement and Clearance) Act 1956-over-riding effect of Acts-No conflict as scope and objects of Acts are different-Premises Act whether prevails over Rent Act.

HEADNOTE:

The L.I.C. (respondent No. 1) purchased a building at a court auction. The appellant was inducted as a tenant by the prior owner of the premises. The L.I.C. gave notice under section 106 of the Transfer of Property Act directing the appellant to vacate the premises. As the appellant did not vacate the premises the L.I.C. filed a complaint with the Estate Officer, L.I.C. (respondent No. 2) under the

provisions of the Public Premises (Eviction of Unauthorised occupants) Act 1971, who issued a notice to the appellant under section 4(1) of the Act to show cause why the appellant be not evicted. Before the Estate Officer the appellant raised preliminary objections which related to the question of jurisdiction of the Estate Officer to proceed under the Premises Act. The Estate Officer decided the question against him and the High Court confirmed the order.

In appeal to this Court on behalf of the appellant it was contended: (1) The appellant could not be described as an 'unauthorised occupant' within the meaning of section 2(2)(g) of the 1971 Act because he had entered into possession of the premises long before they were purchased by the L.I.C.; (2)(i). The Premises Act of 1971 which had been given retrospective effect from the 16th September, 1958 should be construed as a law having been passed in 1958 and so construed the Rent Act (The Delhi Rent Control Act) passed in 1959 over-rides the Premises Act; (ii) The Rent Act which is a special law would override the Premises Act and (iii) The intention of the Legislature in passing the Rent Act as seen from section 3(a) was merely to exclude from its operation only premises belonging to the Government and if the intention was to exclude other premises belonging to corporate bodies or Corporations then section 3(a) would have been differently worded.

Apart from the Rent Act section, Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 which is also a Special Act applying only to such places which are declared to be slums under the Act, would override the provisions of both the Rent Act and the Premises Act.

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Dismissing the Appeal:

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HELD: (1)(a) The appellant was undoubtedly in unauthorised occupation of the premises. [503 D]

(b) Section 2(2)(g) does not use the word 'possession' or the words 'entry into possession' at any point of time at all. The section merely requires occupation of any public premises. Entry into possession connotes one single terminus, viz., the point of time when a person enters into possession or occupies the property whereas occupation is a continuous process which starts right from the point of time when the person enters into possession or occupies the premises and continues until he leaves the premises. [502 G-H]

In the instant case the lease was determined by the landlord by a notice under section 106 of the Transfer of Property Act. Therefore, there can be no doubt that the appellant was in unauthorised occupation of the premises once the lease was determined. [503 C]

Raj Kumar Devendra Singh & Anr. v. State of Punjab and Ors. [1973] 2 SCR 166 distinguished.

2(i) The Premises Act was passed in 1971 and came into

force on 23rd August, 1971 that is long after the Rent Act was passed in 1959. The mere fact that by virtue of a fiction the Premises Act was given retrospective effect from 1958 will not alter the date when the Premises Act was actually passed, that is August 23, 1971. The Premises Act being subsequent to the Rent Act would naturally prevail over and override the provisions of the Rent Act. [503 G]

(ii) The scope and the object of the Premises Act is quite different from that of the Rent Act. The Rent Act is of much wider application, inasmuch as it applies to all private premises, which do not fall within the limited exceptions indicated in section 2 of the Premises Act. The object of the Rent Act is to afford special protection to all the tenants or private landlords who are neither a Corporation nor Government or Corporate Bodies. Even under the Rent Act, a special category has been carved out by section 25B which provides for special procedure for eviction to landlords who require premises for their personal necessity. Section 25B therefore, becomes a special law within the Rent Act. Therefore, the Premises Act as compared to the Rent Act, is a Special Act and overrides the provisions of the Rent Act. [505 B-C]

Sarwan Singh & Anr. v. Kasturi Lal [1977] 2 SCR 421 & Shri Ram Narain v. The Simla Banking & Industrial Co. Ltd. [1956] SCR 603 referred to.

(iii) once the Premises Act becomes a Special Act dealing with the premises belonging to the Central Government, Corporations and other statutory bodies, the Rent Act stands superseded. [505 F]

3. Section 19 of the Slums Act shows that it is in direct conflict with the Premises Act which expressly provides for the forum for evicting persons in unauthorised occupation of premises which fell in section 2 of the Premises Act. The Premises Act, being subsequent to the Slums Act, as amended in 1964, and again being a special Act having a very limited sphere, must necessarily override the Slums Act. [506 D]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 224 of 1979.

Appeal by Special Leave from the Judgment and Order dated 6-12-1978 of the Delhi High Court in C.W. No. 1361/78.

P. Parameswara Rao and R. Nagarathnam for the Appellant.

K. Parasaran, Sol. Genl., V. Gauri Shanker, K.L. Hathi and Mrs. Hemantika Wahi for the Respondents.

The Judgment of the Court was delivered by FAZAL ALI, J.-This appeal by special leave is directed against a Division Bench judgment dated December 6, 1978 of the High Court of Delhi and arises under the following circumstances.

The appellant was inducted as a tenant by one Mithanlal who was the owner of the premises in question and the rent payable at the time of the tenancy-was Rs 55 per month. The premises were, however, purchased by the Life Insurance Corporation of India (for short, LIC) at a court auction on July 19, 1958 and the appellant in view of the same attorned to the new landlord, namely, the LIC. The Delhi Rent Control Act of 1958 (hereinafter referred to as the 'Rent Act') came into force on February 9, 1959 and on July 24, 1969 the new landlord gave a notice under s. 106 of the Transfer of Property Act to the appellant determining the tenancy. This notice, however, was subsequently withdrawn and after some correspondence with the appellant the rent was increased by the LIC from Rs. 55 to Rs. 125 per month. Sometime towards the end of July 1966, the LIC gave a fresh notice under s. 106 of the Transfer of Property Act purporting to determine the tenancy. Thereafter, there were some parleys between the LIC and the appellant and ultimately the LIC agreed to accept the enhanced rent of Rs. 300 per month from the appellant with effect from December 1, 1976. On April 23, 1977 the LIC gave another notice under s. 106 superseding the previous notice and directing the appellant to vacate the premises on or before May 31, 1977. As the appellant did not vacate the premises, the LIC filed a complaint with respondent No. 2, the Estate Officer, LIC under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the 'Premises Act'). Thereafter, the second respondent issued a notice to the appellant under s. 4(1) of the Premises Act to show cause why the appellant be not evicted. The appellant appeared before the Estate Officer and raised certain preliminary objections which having been decided against him, the appellant filed a writ petition in the Delhi High Court against the order of the Estate Officer and reiterated the preliminary objections taken by him before the Estate Officer. After considering the preliminary objections which mainly related to the question of jurisdiction of the Estate officer to proceed under the Premises Act, the High Court overruled all the objections and dismissed the writ petition in limine, though by a reasoned order. Hence, this appeal to the Supreme Court.

Before dealing with the contention raised by counsel for the respondent we might mention that the proceedings before the Estate officer under the Premises Act have only been stayed and not yet decided on merits because the appellant wanted the Estate officer to decide the question of jurisdiction as a preliminary issue.

In support of the appeal, Mr. Parmeshwar Rao submitted three main contentions before us. In the first place, he submitted that the provisions of the Premises Act would have no application to the present premises because the appellant could not be described as an unauthorised occupant as he had entered into possession of the premises long before they were purchased by the LIC. It was argued that the condition precedent for the assumption of jurisdiction by the Estate officer was that the appellant must be an unauthorised occupant, and if the possession of the appellant was lawful,

though the property changed hands subsequently, the appellant could not be dubbed as an unauthorised occupant. In this connection, reliance was placed on a decision of this Court in *Rajkumar Devindera Singh & Anr. v. State of Punjab & Ors*. We have gone through the decision cited before us and we find that the provisions of the Punjab Act, which was the subject matter of interpretation by this Court in that case, were substantially and materially different from s. 2(2)(g) of the Premises Act which defines unauthorised occupation. Mr. Rao, however, strongly relied on the following observations made by this Court in the case *supra*:-

"If the appellants were in possession before the date of the sale of the property to the Government, it could not be said that the appellants entered into possession of public premises, for, at the time when they were in occupation of the property, the property was not public premises. Then it was either the joint family property or the property of the Maharaja, namely, Yadavindra Singh. The property was not public premises before it was sold to the Government."

If these observations of this Court are torn from the context they may presumably support the argument of the appellant but we have to read these observations in the light of the specific provisions of the Punjab, Public Premises and Land (Eviction and Rent Recovery) Act, 1959 (hereinafter referred to as the 'Punjab Act'). Relevant portion of s. 3 of that Act may be extracted thus:

"For purposes of this Act, a person shall be deemed to be in unauthorised occupation of any public premises:-

(a) where he has whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant." [Emphasis Ours] It would be seen that before a person could be said to be in an unauthorised occupation, the Act required the following conditions:-

(1) that the occupant had entered into possession before or after the commencement of the Act. (2) that he had entered into such possession otherwise than under and in pursuance of any allotment, lease or grant.

That Act, therefore, lays special stress on only one point, namely, the entry into possession. Thus, if the entry into possession had taken place prior to the passing of the Act, then obviously the occupant concerned would not be an unauthorised occupant. What made the occupancy unauthorised was his entry into possession at a particular point of time. It was in construing these provisions that this Court held that if the appellants in that case were in possession before the sale of the property to the Government, their entry into possession could not be said to be unauthorised. These observations, however, would have absolutely no application to the instant case where s. 2(2)(g) defines unauthorised occupation thus:-

"unauthorised occupation', in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and

includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

To begin with, it is manifest that s. 2(2)(g) does not use the word 'possession' or the words 'entry into possession' at any point of time at all. The section merely requires occupation of any public premises. Entry into possession connotes one single terminus, viz., the point of time when a person enters into possession or occupies the property whereas occupation is a continuous process which starts right from the point of time when the person enters into possession or occupies the premises and continues until he leaves the premises. What is germane for the purpose of interpretation of s. 2(2)(g) is whether or not the person concerned was in occupation of the public premises when the Premises Act was passed. In the instant case, it is not disputed that the appellant continued to occupy the property even after the Premises Act came into force and in fact accepted the LIC as his landlord. In these circumstances, therefore, the case of the appellant squarely falls within the ambit of the definition of 'unauthorised occupation' as contemplated by s. 2(2)(g). There is yet another aspect of the matter which distinguishes the present case from the language employed in the Punjab Act. Section 2(2)(g) is an inclusive definition and consists of two separate limbs-(1) where a person is in occupation in relation to any public premises without authority for such occupation, and (2) even if the possession or occupation of the tenant continues after the lease is determined. In the instant case, the lease was doubtless determined by the landlord by a notice under s. 106 of the Transfer of Property Act whose validity for purposes of deciding the question of law has not been questioned by the learned counsel for the appellant. Therefore, there can be no doubt that the appellant was in unauthorised occupation of the premises once the lease was determined. The second limb mentioned in s. 2(2)(g) is conspicuously absent from the provisions of the Punjab Act. For these reasons, we overrule the first contention raised by the counsel for the appellant and we hold, agreeing with the High Court, that the appellant was undoubtedly in unauthorised occupation of the premises.

The second contention put forward by Mr. Rao was that in view of the provisions of the Rent Act which override the provisions of the Premises Act, s. 14 of the Rent Act completely bars recovery of possession of any premises except in accordance with the procedure laid down in the Rent Act. It was contended by Mr. Rao that although the Premises Act was passed in 1971, it has been given retrospective effect from 16th September 1958 and, therefore, should be construed as a law having been passed in 1958 and as the Rent Act was passed in 1959 it overrides the Premises Act. We are, however, unable to agree with this argument. In the first place, the Premises Act was passed in 1971 and came into force on the 23rd of August 1971, that is to say, long after the Rent Act was passed in 1959. The mere fact that by virtue of a fiction the Premises Act was given retrospective effect from 1958 will not alter the date when the Premises Act was actually passed, that is to say August 23, 1971. In these circumstances, therefore, the Premises Act being subsequent to the Rent Act would naturally prevail over and override the provisions of the Rent Act. It was further contended by Mr. Rao that the Rent Act being a special law as compared to the Premises Act, it will override the Premises Act without going into the question as to which of the two Acts were prior in point of time. In support of his contention the counsel relied on a decision of this Court in *Sarwan Singh & Anr. v.*

Kasturi Lal where this Court observed as follows:

"When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration."

(emphasis supplied) It is true that in both the Acts there is a non-

obstante clause but the question to be determined is whether the non-obstante clauses operate in the same field or have two different spheres though there may be some amount of overlapping. The observations cited above clearly lay down that in such cases the conflict should be resolved by reference to the object and purpose of the laws in consideration. In *Shri Ram Narain v. The Simla Banking & Industrial Co. Ltd.*, (2) this Court made the following observations:-

"It is therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intentment conveyed by the language of the relevant provisions therein."

In the light of the principles laid down in the aforesaid cases we would test the position in the present case. So far as the Premises Act is concerned it operates in a very limited field in that it applies only to a limited nature of premises belonging only to particular sets of individuals, a particular set of juristic persons like companies, corporations or the Central Government. Thus, the Premises Act has a very limited application. Secondly, the object of the Premises Act is to provide for eviction of unauthorised occupants from public premises by a summary procedure so that the premises may be available to the authorities mentioned in the Premises Act which constitute a class by themselves. That the authorities to which the Premises Act applies are a class by themselves is not disputed by the counsel for the appellant as even in the case of *Northern India Caterers Pvt. Ltd. & Anr. v. State of Punjab & Anr.* such authorities were held to form a class and, therefore, immune from challenge on Art. 14 of the Constitution. Similarly, the summary procedure prescribed by the Premises Act is also not violative of Art. 14 as held by this Court in *Maganlal Chhagganlal (P) Ltd. v. Municipal Corporation of Greater Bombay & Ors.* (1).

Thus, it would appear that both the scope and the object of the Premises Act is quite different from that of the Rent Act. The Rent Act is of much wider application than the Premises Act inasmuch as it applies to all private premises which do not fall within the limited exceptions indicated in s. 2 of the Premises Act. The object of the Rent Act is to afford special protection to all the tenants or private landlords or landlords who are neither a Corporation nor Government or Corporate Bodies. It would be seen that even under the Rent Act, by virtue of an amendment a special category has been carved out under s. 25B which provides for special procedure for eviction to landlords who require premises for their personal necessity. Thus, s. 25B itself becomes a special law within the Rent Act. On a parity of reasoning, therefore, there can be no doubt that the Premises Act as compared to the

Rent Act, which has a very broad spectrum, is a Special Act and overrides the provisions of the Rent Act.

It was also suggested by Mr. Rao that in view of s. 3(a) of the Rent Act, which is extracted below, it would appear that the intention of the legislature in passing the Rent Act was merely to exclude from its operation only premises belonging to the Government and if the intention was to exclude other premises belonging to corporate Bodies or Corporations, then s. 3(a) should have been differently worded:

"3. Nothing in this Act shall apply:-

(a) to any premises belonging to the Government."

This in our opinion, does not advance the case of the appellant any further because once the Premises Act becomes a special Act dealing with premises belonging to Central Government, Corporations and other statutory Bodies, the Rent Act stands superseded. We have to consider the provisions of the two Acts, they having been passed by the same legislature, viz., Parliament, and the rule of harmonious construction would have to apply in such cases.

For these reasons, we overrule the second preliminary objection taken by the appellant.

Lastly, it was argued that apart from the Rent Act, s. 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (hereinafter referred to as the 'Slums Act'), which also would have to be construed as a Special Act applying only to such places which are declared to be slums under the Act, would override the provisions of both the Rent Act and the Premises Act. This argument appears to us to be without substance. The Slums Act was passed as far back as 1956 and the Premises Act was subsequent to the Slums Act and would, therefore, prevail over the Slums Act. Relevant portion of s. 19 of the Slums Act may be extracted thus:

"19. (1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority,-

(a) institute, after the commencement of the Slum Areas (Improvement and Clearance) Amendment Act, 1964 any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area;"

A perusal of s. 19 of the Slums Act clearly shows that it is in direct conflict with the Premises Act which expressly provides for the forum for evicting persons in unauthorised occupation of premises which fell in s. 2 of the Premises Act. The Premises Act being subsequent to the Slums Act, as amended in 1964, and again being a special Act having a very limited sphere, must necessarily override the Slums Act on the same lines of reasoning as we have indicated in the case of the Rent Act. For these reasons, therefore, the last contention put forward by the counsel for the appellant is also overruled. The High Court had also overruled all these preliminary objections more or less on



the same reasons as given by us though not in such details.

It is, however, not necessary for us to remand the matter to the trial court for decision of the case on merits because the Solicitor General having agreed to give two years' time to the appellant to vacate the premises on filing the usual undertaking, the appellant does not want to contest the proceedings before the Estate officer, LIC and has undertaken to give vacant and peaceful possession to the respondent on August 1, 1982. Meanwhile, the appellant shall keep on paying the usual rent. The appellant shall also file an undertaking accompanied by an affidavit to the effect that it shall hand over vacant and peaceful possession to the respondent on or before August 1, 1982 and shall not induct any tenant on the premises. The undertaking shall be filed within three weeks from today. The subject matter of the appeal is accordingly disposed of finally.

N.V.K.

Appeal dismissed.