Supreme Court of India
Ram Dass vs Ishwar Chander And Others on 9 May, 1988
Equivalent citations: 1988 AIR 1422, 1988 SCR Supl. (1) 239
Author: M Venkatachalliah
Bench: Venkatachalliah, M.N. (J)

PETITIONER:
RAM DASS

Vs.

RESPONDENT:
ISHWAR CHANDER AND OTHERS

DATE OF JUDGMENT09/05/1988

BENCH:
VENKATACHALLIAH, M.N. (J)
BENCH:
VENKATACHALLIAH, M.N. (J)
PATHAK, R.S. (CJ)
NATRAJAN, S. (J)

CITATION:
1988 AIR 1422 1988 SCR Supl. (1) 239
1988 SCC (3) 131 JT 1988 (2) 426
1988 SCALE (1)1137
CITATOR INFO :
R 1991 SC 744 (10)

ACT:
Constitution of India, 1950-Article 136-Bonafide need of landlord of accommodation-Eviction of tenant-All conclusions drawn from primary facts-Not necessarily questions of law-Often are pure questions of fact-Bonafide requirement is one such.

East Punjab Rent Restrictions Act, 1949: Section 15-Tenant-Eviction of-On ground of bonafide need of landlord-High Court-Jurisdiction of-To interfere in revision-Court can take cautious cognizance of subsequent events to mould relief.

HEADNOTE:
The appellant and the respondents were tenants of separate portions of the premises which was later sold by the landlord to the respondents, who were four brothers. The respondents filed a petition for eviction of the appellant on the ground of bonafide requirement. They contended that they were in all 10 brothers, who, alongwith their families, were living together with their father, and the

accommodation in their occupation was insufficient for their needs.

The Rent Controller upheld the claim of the respondents. The Appellate Authority (District Judge), however, allowed the appellant's appeal. The High Court, in revision under section 15(5), reversed the appellate judgment and restored that of the Court of first instance.

Before this Court the appellant contended:

(1) That the High Court in exercise of its revisional jurisdiction was precluded from re-opening the findings of fact recorded by the appellate authority; and (2) that the findings of the High Court on reappraisal of evidence were wholly erroneous.

Dismissing the appeal, it was,

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HELD: (1) It was, no doubt, true that the question whether the requirement of the landlord was bonafide or not was essentially one of

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fact, notwithstanding the circumstance that a finding of fact in that behalf was a secondary and inferential fact drawn from other primary or perceptive ones. All conclusions drawn from primary facts were not necessarily, questions of law. They could be, and quite often were, pure questions of fact. The question as to bonafide requirement was one such. [242G-H]

(2) The landlord's desire for possession, however honest it might otherwise be, had inevitably a subjective element in it, and that "desire" to become a "requirement" in law must have the objective element of a "need". [243C]

(3) Statute had been enacted to afford protection to tenants from eviction. In considering the reasonable requirement of the landlord the court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant was not rendered merely illusory or whittled down. [243A, C-D]

(4) Subject to the well-known limitations of all revisional jurisdictions, the scope of revisional power essentially turned on the language of the statute investing the revisional jurisdiction. [243E]

(5) Section 15(5) of the Act enabled the High Court to satisfy itself as to the "legality and propriety" of the order under revision, which was quite obviously, a much wider jurisdiction in the exercise of which, an appropriate case, the High Court could reappraise the evidence if the finding of the appellate court was found to be infirm in law. [243G; 244F]

(6) Courts could take a 'cautious-cognizance' of the subsequent-events in order to mould the relief. [245F-G]

Mattulal v. Radhe Lal, [1975] 1 SCR 127; Phiroze Bamanji Desai v. Chandrakant M. Patel, [1974] 3 SCR 267; Bell & Co. Ltd. v. Waman Hemraj, AIR 1938 Bom. 223; Hari Shankar v. Girdhari Lal Chowdhury, (AIR 1963 SC 698);

Dattonpant Gopalvarao Devakata v. Vithalrao Marutirao, AIR 1975 SC 1111 and M/s Ranalakshmi Dyeing & Others v. Rangaswamy, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2969 of 1984.

From the Judgment and Order dated 29.5.1984 of the Punjab and Haryana High Court in Civil Revision No. 1934 of 1982.

Harbans Lal and Balmokand Goyal for the Appellant. V.C. Mahajan and K.R. Nagaraja for the Respondents. The Judgment of the Court was delivered by:

VENKATACHALIAH, J. This appeal, by special Leave, by the tenant arises out of the proceedings for eviction instituted against him under the East Punjab Rent Restriction Act 1949 and is preferred against the judgment, dated, 29.5.1984 in Civil Revision No. 1934 of 1982 of the Punjab and Haryana High Court, reversing the judgment, dated, 30.4.1982 made by the Appellate Authority, Kapurthala, in Rent Appeal No. 130 and restoring that of the Rent Controller, dated, 17.12.1978 in rent case no. 47 of 1977, granting possession to the Respondent-landlords.

2. Appellant was a tenant of the premises concerned in the proceedings on a monthly rent of Rs.3 having been inducted into possession on 9.12.1965 by the then owner Smt. Manohar Kaur. The premises in the occupation of the appellant consist of a portion of the ground-floor of the building. On 15.12.1976, the said Manohar Kaur sold the entire property in favour of respondents. The respondents are four brothers. Prior to the purchase, they were occupying, as tenants, other portions of the same building both in the first floor and the second floor. They were in occupation of three rooms in the first floor and one in the second.

On 27.9.1977, respondents filed a petition for eviction of the appellant on the ground of their own bonafide requirement of the premises. They alleged that the portion in their occupation was insufficient for their needs and that they required additional accommodation. They said that they were in all 10 brothers who, alongwith their families, were living together with their father.

3. Appellant contested the claim, urging that the first-respondent one of the brothers, was in occupation of other rented-premises in the same town at a place called Mohalla Malka-na; that the respondents' father was himself in occupation of a separate rented premises; that the accommodation already available to the respondents was more than sufficient for their requirements and that, accordingly, their projected need was fictitious and malafide. Appellant also said that the proceedings were brought in collusion with the previous owner.

4. On an appreciation of the evidence, the Rent Controller upheld the claim of the landlords and made an order granting possession. The Appellate Authority (District Judge) however, allowed

appellants' appeal and set-aside the order of eviction. The High Court in revision under Section 15(5) of the Act reversed the appellate judgment and restored that of the court of first instance. The aggrieved tenant has come-up by special leave.

5. In support of the appeal, Shri Harbans Lal, learned senior advocate, urged that the order of the High Court suffers from, and stands vitiated, by, two serious errors: The first, according to the learned counsel, is that the High Court, in exercise of its revisional jurisdiction, was precluded from reopening findings of facts recorded by the Appellate-Authority and substituting fresh findings of its own on a reappraisal of the evidence even if the fresh findings so recorded could be said to be amongst those possible on the evidence. Learned Counsel placed reliance on Mattulal v. Radhe Lal, [1975] 1 SCR 127 and Phiroze Bamanji Desai v. Chandrakant M. Patel & Ors., [1974] 3 SCR 267.

The second is that the findings as to the bonafides, or the lack of it, of the alleged need for the additional- accommodation recorded by the Appellate Authority were sound, proper and supportable on the evidence on record and the High Court in exercise of its revisional jurisdiction could not have reappraised the evidence afresh and that the findings so substituted by the High Court are wholly erroneous.

Sh. V.C. Mahajan, learned senior advocate for the respondent-landlords, however, sought to support the order of the High Court.

6. Upon a consideration of the matter, we are of the view that both the contentions urged in support of the appeal are in-substantial.

It is, no doubt, true that the question whether the requirement of the landlords is bonafide or not is essentially one of fact, notwithstanding the circumstance that a finding of fact is a secondary and inferential fact drawn from other primary or perceptive ones. All conclusions drawn from primary-facts are not necessarily, questions of law. They can be, and quite often are, pure questions of fact. The question as to bonafide requirement is one such.

Statutes enacted to afford protection to tenants from eviction on the basis of contractual rights of the parties make the resumption of possession by the land-lord subject to the satisfaction of certain statutory conditions. One of them is the bonafide requirement of the land-lord, variously described in the statutes as "bona-fide requirement", "reasonable requirement", "bona-fide and reasonable requirement" or, as in the case of the present statute, merely referred to as "landlord requires for his own use". But the essential idea basic to all such cases is that the need of the landlord should be genuine and honest, conceived in good faith; and that, further, the court must also consider it reasonable to gratify that need. Landlord's desire for possession however honest it might otherwise be, has inevitably a subjective element in it and that, that desire, to become a "requirement" in law must have the objective element of a "need". It must also be such that the court considers it reasonable and, therefore, eligible to be gratified. In doing so, that court must take all relevant circumstances into consideration so that the protection afforded by law to the tenant is not rendered merely illusory or whittled down.

7. On the first contention that the revisional powers do not extend to interference with and upsetting of findings of fact, it needs to be observed that, subject to the well- known limitations inherent in all revisional jurisdictions, the matter essentially turns on the language of the statute investing the jurisdiction. The decisions relied upon by Shri Harbans Lal, deal, in the first case, with the limitations on the scope of interference with findings of fact in second-appeals and in the second, with the limitation on the revisional powers where the words in the statute limit it to the examination whether or not the order under revision is "according to law." The scope of the revisional powers of the High Court, where the High Court is required to be satisfied that the decision is "according to law" is considered by Beaument C.J. in Bell & Co. Ltd. v. Waman Hemraj, AIR 1938 Bombay 223 a case referred to with approval by this Court in Hari Shankar v. Girdhari Lal Chowdhury, AIR 1963 SC 698.

But here, Section 15(5) of the Act enables the High Court to satisfy itself as to the "legality and propriety" of the order under revision, which is, quite obviously, a much wider jurisdiction. That jurisdiction enables the court of revision, in appropriate cases, to examine the correctness of the findings of facts also, though the revisional court is not "a second court of first appeal" (See Dattonpant Gopalvarao Devakate v. Vithalrao Marutirao).

Referring to the nature and scope of the revisional jurisdiction and the limitations inherent in the concept of a `Revision' this Court in M/s. Ranalakshmi Dyeing Works & Ors. v. Rangaswamy Chettier, [1980] 2 RCJ 165 (at 167) observed:

> "..... 2. "Appeal" and "revision" are expressions of common usage in Indian statutes and the distinction between "appellate jurisdiction" and "revisional jurisdiction" is well known though not well defined. Ordinarily, appellate jurisdiction involves a rehearing, as it were, on law as well as fact and is invoked by an aggrieved person. Such jurisdiction may, however, be limited in some way as, for instance has been done in the case of second appeals under the Code of Civil Procedure and under some Rent Acts in some States. Ordinarily, again, revisional jurisdiction is analogous to a power of superintendence and may sometimes be exercised even without its being invoked by a party. The extent of revisional jurisdiction is defined by the statute conferring such jurisdiction ..... Revisional jurisdiction as ordinarily understood with reference to our statutes is always included in appellate jurisdiction but not vice-versa. These are general observations. The question of the extent of appellate or revisional jurisdiction has to be considered in each case with reference to the language employed by the statute ....."

The criticism of Sri Harbans Lal that it was impermissible for the High Court in its revisional jurisdiction to interfere with the findings of fact recorded by the appellate authority, however erroneous they be, is not, having regard to the language in which the revisional power is couched, tenable. In an appropriate case, the High Court can reappraise the evidence if the findings of the appellate court are found to be infirm in law.

8. Now to the second contention. The High Court was of the view that certain findings recorded by the Appellate Authority on the question of the bonafides of the requirement of the landlords were based on material which was not quite relevant. Secondly, the High Court took into account certain subsequent events brought on record. In regard to the first aspect, the High Court observed:

> "..... According to the learned Appellate Authority there was no evidence on record to prove that the landlords were ten brothers since their father had not come in the witnessbox to depose in this regard. This approach of the learned Appellate Authority is without wrong and illegal. There was nothing to disbelieve Ishwar Chander when he says that they are ten brothers. No question was put to him in the cross-examination to challenge the said statement of his ....."

The High Court noticed that so far as the premises which were said to be in the occupation of the Ishwar Chander (Respondent No. 1) were concerned, the owner of those premises was seeking resumption of possession. Further, in respect of the accommodation in the hands of the farther, there were already proceedings for eviction against him binding decision in the High Court.

In regard to the subsequent events which the High Court took notice of it said:

> "..... Thus, what has to be seen is whether the accommodation in their occupation is sufficient for their requirements or not. Of course, out of the four landlords, one is married and the others were unmarried when the ejectment application was filed in the year 1977. However, about seven years have passed since then. Mean-while, Surinder Kumar landlord has also been married and he has got one son aged 2 years, whereas Subhash Chand has also been recently married in March, 1984, as per the affidavit of Hukam Chand, father of the landlords, dated 27th May, 1984. Thus, there was nothing on the record to show that the present accommodation in occupation of the landlords was sufficient to meet their requirements ....."

Courts can take a `cautious-cognizance of the subsequent- events in order to mould the relief. The High Court did that.' No fault could be found with that.

9. CMP No. 33347 is filed by the appellant, seeking to bring certain subsequent events on record. The alleged subsequent event is that pursuant to an agreement for purchase of another residential building entered into by the first respondent and his wife, a sale deed had subsequently come to be executed in favour of first respondent's wife. The contention is that having regard to this subsequent- acquisition, the present claim for additional accommodation does not survive.

We are afraid this circumstance, even if true, will not tilt the balance in favour of the appellant. Even if the need of the other three brothers who are co-owners is taken into account, the order of eviction is supportable on the basis of ther need. CMP is, therefore, of no practical assistance to the appellant.

10. In the result, we find no merit in this appeal which is accordingly dismissed, but without an order as to costs.

R.S.S. Appeal dismissed.