Supreme Court of India
Pankaj Bhargava And Anr vs Mohinder Nath And Anr on 11 December, 1990
Equivalent citations: 1991 AIR 1233, 1990 SCR Supl. (3) 508
Author: M Venkatachalliah
Bench: Venkatachalliah, M.N. (J)

PETITIONER:
PANKAJ BHARGAVA AND ANR.

Vs.

RESPONDENT:

MOHINDER NATH AND ANR.

DATE OF JUDGMENT11/12/1990 BENCH:

VENKATACHALLIAH, M.N. (J) BENCH:

VENKATACHALLIAH, M.N. (J) OJHA, N.D. (J) VERMA, JAGDISH SARAN (J) CITATION:

1991 AIR 1233 1990 SCR Supl. (3) 508
1991 SCC (1) 556 JT 1990 (4) 628
1990 SCALE (2)1251
CITATOR INFO :
RF 1992 SC1555 (2,16,20)

ACT:

Delhi Rent Control Act, 1958: Sections 21 and 39--Tenan- cy for limited period---Rent Controller on basis of admis- sions of parties granting permission--Whether can be chal- lenged in collateral proceedings.

Appeal--'Substantial question of law'--What is. Code of Civil Procedure, 1908: Section 9---Civil Court--Jurisdiction of--Competence to take decision--The test.

Indian Contract Act, 1872: Section 8--Stipulation for payment of rent--Whether brings about a contract of tenancy. Transfer of Property Act, 1882: Section 105--Lease--Yearly rent paid by cheque--Cheque returned--Effect on lease--What is.

Words & Phrases: 'Substantial question of law'--Meaning of.

HEADNOTE:

The appellants and the respondents by their joint appli- cation to the Rent Controller sought for and obtained per- mission for a limited tenancy, under Section 21 of the Delhi Rent Control Act, 1958. The Respondents not having surren- dered possession upon the expiry of the said period of five

years, the appellants commenced proceedings for re-delivery. Respondents resisted the proceedings raising several conten- tions. They urged that the appellants were not the owners of the premises at all; that the permission under Section 21 was vitiated by fraud resulting from a suppression by the appellants of the material fact that at the relevant time the premises was not available for letting at all; that respondents having been inducted into possession as tenant from March 5, 1978 itself, one of the basic jurisdictional requirements for the grant of permission under Section 21 was absent, and that at all events a fresh contractual tenancy had been created with effect from April 6, 1983 immediately upon the expiry of the five year term of the limited tenancy.

The Rent Controller rejected all the aforesaid conten- tions and made an order granting possession. The respondents' appeal before the Rent Control Tribunal was unsuccessful, but the second appeal under Section 39 of the Act was allowed by the High Court which held that even prior to the limited tenancy the respondents had been in- ducted into possession as tenants; that the subsequent permission for the limited tenancy was a mere pretence and the result of a fraud on the statute and therefore a nulli- ty, and relying on this Court's decision in Subhash Kumar Lata v. R.C. Chhiba, [1988] 4 SCC 709 held that such a nullity could be pleaded in and against execution as well. It accordingly reversed the orders of the authorities below, and dismissed the appellants' claim for possession. In the landlords' appeal to this Court it was contended that: (1) both the Rent Controller and the Appellate Tribu- nal having concurrently held that with the respondents' occupation of the premises from March 5, 1978 to April 5, 1978 even if true, did not constitute a tenancy in that the other requisite indicia of such tenancy, namely, the stipu- lation of a consideration was absent and that being a pure question of fact, the High Court in exercise of its juris- diction under Section 39 which permitted only an appeal on a substantial question of law could not reappreciate the evidence and upset the finality of that finding of fact, (2) that even if the limited tenancy under Section 21 was ob- tained despite the subsistence of a tenancy created earlier, the respondents were bound to assail the validity of the limited tenancy during its subsistence and not as a collat- eral plea in the course of execution, (3) Even if the re- ceipt Ex. D.W.1/3 was susceptible of an inference that the transaction envisaged by it was one of lease could be said to be a question of law, by no standards it could be said to be a substantial question of law within the meaning and for the purposes of Section 39 of the Act.

On behalf of the tenants it was urged that Section 21 to the extent it runs counter and forms an exception to the general scheme of the statute its operation was required to be restricted severely to the expressed conditions and limitations contained in that section and that wherever permission for a limited tenancy was sought and obtained suppressing any jurisdictional fact such as that the pro- spective limited tenant was already in occupation as a regular tenant, the transaction amounted to a fraud on the statute rendering the permission void ab initio, that the jurisdiction of the Rent Controller to grant permission is conditional and that if the conditions upon which alone permission can be granted are not fulfilled permission cannot be granted in invitum and that consequently the landlord cannot recover posses- sion.

Allowing the appeal, this Court, HELD: 1(a) The receipt dated March 5, 1978 on which Respondents relied contained a recital that a cheque for Rs.18,000 mentioned in it was given as rent for the premises for the period of. 12 months w.e.f. March 5, 1978. The Rent Controller and the Tribunal,

quite erroneously, proceeded to hold that the mere fact that the cheque had been shown to have been returned had the effect of taking away the consid- eration for the lease. These authorities mistook the non- payment of rent in point of fact as equivalent to absence of consideration in point of law. This was clearly erroneous. [515D] A stipulation for payment of rent was by itself suffi- cient to bring about a contract of tenancy where, of course, the other element of exclusivity of possession was shown. The High Court held that a consideration promised is as valid as one paid, and that, therefore, the circumstance that the cheque was returned would not detract from the legal consequence of the stipulation to pay rent implicit in Exhibit DW 1/3. The High Court construed the receipt and found that a lease was intended. [515E]

2. The construction of a document which is the founda- tion of the rights of the parties raises a question of law. An inference from facts admitted or found is a question of law if such an inference is to be drawn on the application of proper principles of law to the facts. Such determination is a mixed question of the fact and law. The submission that the High Court treaded on the forbidden ground of facts cannot therefore be accepted. [515F]

3. What is a 'substantial question of law' would cer- tainly depend upon facts and circumstances of every case. If a question of law had been settled by the highest court of the country that question however important and difficult it may have been regarded in the past and however large may be its effect on any of the parties, would not be regarded as substantial question of law. [515H] Raghunath Prasad v. Deputy Commissioner of Partabgarh, [1927] 54 I.A. 126; Sir Chunilal V. Mehta and Sons Ltd. v. The Century Spinning and Manufacturing Co. Ltd., [1962] Supp. 3 SCR 549 at 557 and 558 and Union of India v. M/s. Chaman Lal & Co., AIR 1957 SC 652 at 655 & 656, relied on.

Kaikhushroo Pirojsha Ghaira v. C.P. Syndicate Ltd., [1948] I. Bom. L.R. 744; Dinkarrao v. Rattansey, I.L.R. (1949) Nag. 224 and Rimmalapudi Subba Rao v. Noony Veeraju, I.L.R. 1952 Mad. 264, referred to.

4(a) In view of the pronouncements of this Court as to the limitations on the permissible challenge to the exercise of jurisdiction under Section 21, any appeal to the remedy based on concept of nullity and collateral attack is inap- propriate. [521H]

(b) In a collateral challenge the exercise is not the invalidation of a decision, but only to ascertain whether the decision "exists" in law at all and to rely upon inci- dents and effect of its "non-existence". The permission granted must be presumed to be valid till set aside. Doc- trine of collateral challenge will not apply to a decision which is valid ex-hypothesis and which has some presumptive existence, validity and effect in law. Such a decision can be invalidated by the right person in 'right proceedings brought at the right time. It is only a nullity stemming from lack of inherent jurisdiction or a proceeding that wears the brand of invalidity on its forehead that might afford a defence even against enforcement. Such a collateral challenge may not be available where there is no lack of inherent jurisdiction but what is disputed is only the existence or non-existence of facts which though collateral to the merits do require investigation into and adjudication upon their existence or non-existence on the basis of evi- dence. If the parties before the Rent Controller have admit- ted that the fact or the event which gives the Controller jurisdiction is in existence and there

was no reason for the Controller to doubt the bona fides of that admission as to a fact or event, the Controller is under no obligation to make further enquiries on his own as to that factual state. The test of jurisdiction over the subject matter is whether the Court or Tribunal can decide the case at all and not whether the court has authority to issue a particular kind of order in the course of deciding the case. [522A-E] Subhash Kumar Lata v. R.C. Chhiba, [1988] 4 SCC 709, com- mented upon.

S.B. Naronah v. Prem Kumari Khanna, [1980] 1 SCR 281; J.R. Vohra v. Indian Export House Pvt. Ltd., [1985] 2 SCR 899; Shiv Chander Kapoor v. Amar Bose, [1990] 1 SCC 234 and Yamuna Maloo v. Anand Swarup, [1990] 3 SCC 30, explained. Joginder Kumar Butan v. R.P. Oberoi, [1987] 4 SCC 20, re- ferred to.

5. The expression 'fraud on the statute' is merely a figurative description of a colourable transaction to evade the provisions of a statute and does not, for purposes of choice of the remedy, distinguish itself from the conse- quences of fraud as vitiating the permission under Section

21. [523H-524A]

6. Permission under Section 21 for letting out the premises to the same tenant for limited periods more than once successively would not by itself and without more vitiate the subsequent grants. In one sense, the successive grants of permission would share, the characteristics of post-facto grant. [524B] Dhanvanti v. D.D. Gupta, [1986] 3 SCC 1, relied on.

7. The jurisdiction of a court depends upon its right to decide the case and not upon the merits of its decision. [522G] Hugh B. Cox. "The Void Order and the Duty to Obey", 16 U.Chi. L.Rev. 86 (1948), relied on.

JUDGMENT: