Lachoo Mal vs Radhey Shyam on 10 February, 1971

Equivalent citations: 1971 AIR 2213, 1971 SCR (3) 693

Author: A.N. Grover

Bench: A.N. Grover, K.S. Hegde

PETITIONER:
LACHOO MAL

Vs.

RESPONDENT:
RADHEY SHYAM

DATE OF JUDGMENT10/02/1971

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
HEGDE, K.S.

CITATION:
1971 AIR 2213 1971 SCR (3) 693

ACT:
U.P. Temporary Control of Rent and Eviction Act, 1947, ss. 1(A) and 3-Construction after 1951-Agreement that Act should apply-If binding upon landlord-Indian Contract Act (9 of 1872), s. 23-Scope of.

HEADNOTE:
The appellant was the tenant of the respondents shop. As the latter wanted to make some constructions they entered into ail agreement in 1962, according to which, the appellant was to vacate the shop but reoccupy it on the same rent as soon as the construction was completed. It was also agreed that all the sections of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, shall be fully applicable to the new tenancy. After the construction was completed the appellant resumed possession and offered rent. The respondent refused the rent and filed a suit for ejectment. In appeal, the High Court held that the appellant was not entitled to the protection of the Act, because, the respondent was entitled to rely on s. IA according to which nothing in the Act shall apply to a building constructed on

or after 1st January, 1951, and that the agreement was unlawful within the meaning of s. 23 of the Indian Contract Act, 1872.
In appeal to this Court,
HELD : The general principle is that every one has a right to waive the advantage of a law, made for his benefit in his private capacity, when a public right or public policy is not infringed thereby. Section 1A was meant for the benefit of owners of buildings constructed after January 1, 1951. But there is no prohibition in the section against a land-lord and his tenant entering into an agreement, that they would not be governed by that section. If a particular owner did not want to avail himself of the benefit of the section, there was no bar created by it to his waiving or giving up or abandoning the advantage and no question of policy, or public policy is involved. Therefore, the performance of the agreement in the present case would not entail the transgression of any law and the agreement was not void under s. 23 of the Indian Contract Act. [696 C; 69-7 D-E; 698 A-C]
Neminath Appayya Hanumannavar v.Jamboorao Sateppa Kochteri, A.I.R. (1966) Mys. 154, approved.
Vita Food Products Incorporated v. Unus Co. Ltd. (in Liquidation), (1939) AC. 277 at 291, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 18 of 1968. Appeal by Special leave from the judgment and order dated April 14,,1967 of the Allahabad High Court in Second Appeal No. 307 of 1965.

V.M. Tarkunde, Urmila Kapoor and R. K. Khanna, for the appellant.

S. V. Gupte and M. V. Goswami, for the respondent. The Judgment of the Court was delivered by Grover, J This is an appeal by special leave from a judgment of the Allahabad High Court and involves the question whether the appellant, who was the tenant, was entitled to the benefit of s. 3 of U.P. (Temporary) Control of Rent and Eviction Act, 1947, hereinafter called the "Act". The facts are not in dispute. The appellant had been occupying a shop in Mathura belonging to the respondent from a very long time, at a monthly rental of Rs. 18.37. In 1962 the respondent wanted to construct rooms on the upper Storey of the shop for his own residence. This construction could possibly be made only if the appellant vacated the shop for some period. On June 4, 1962, the appellant and the respondent entered into an agreement . After reciting the above facts it was agreed that the shop would be. vacated by the appellant on the condition that as soon as the required construction had been completed he would resume possession of the shop. At this stage the following clauses of the agreement may be set out.

"1. On this day the second party has withdrawn his possession from the shop bearing No. 1/2C, situate at Tilakdwar, and has given the same to the first party.

2. The first party shall get the shop constructed within thirty days and would then hand over the possession of the same to the second party.

3. At present a sum of Rs. 18-6-0 per mensem, which includes house tax and water tax, is being paid by the second Party to the first party as rent. After the construction of the shop, the first party shall be entitled to get the same, amount as rent from the second party. All the sections of the U.P. Rent Control and Eviction Act shall be fully applicable to this house. The first party shall in no case be entitled to derive benefits from it as the property built after 1-1-51."

After the construction had been made and the appellant had resumed his possession of the shop the appellant offered rent to the respondent but the latter did not accept the same. Ultimately lie deposited the rent from April 1, 1962 to July 31, 1963 in court under s. 7 C of the Act. The respondent served a notice April 20, 1963 apparently under the provisions of the Transfer of Property Act purporting to terminate the tenancy of the appellant. This was followed by a suit which the respondent filed for ejectment of the appellant and for arrears of rent, damages etc. The Munsif dismissed the suit holding that the appellant was entitled to the protection conferred by s. 3 of the Act which was applicable. The District Judge, on appeal, took the contrary view and decreed the suit. The' High Court affirmed the judgment of the District Judge. It was held, inter-alia, that the, respondent was, entitled to rely on s. 1 A of the Act and the appellant could not be given the benefit of s. 3. Now there can be no manner of doubt that the tenancy between the appellant and the respondent was governed by the provisions of the Act prior to the reconstruction of the premises. It appears to have been accepted that when the respondent made the re-construction after the agreement mentioned above in 1962 the buildings came to be constructed within the terms of s. 1-A of the Act: That section says that nothing in the Act shall apply to any building or part of a building which was under erection or was constructed on or after January 1, 1951. It will have to be decided whether it was open to the respondent to give up the benefit of this provision or waive it by means of an agreement of the nature which was entered into between the appellant and the respondent in June 1962.

According to the preamble on the cessation of the applicability of sub-rule 2 of rule 81 of the Defence of India Rules after September 30, 1946 it was considered expedient owing to the shortage of accommodation in the State of Uttar Pradesh to provide for the continuance during admitted period of powers to control the letting and "the rent of accommodation and to prevent the eviction of tenants therefrom. Section 3 imposed restrictions on eviction. No suit could be filed in any civil court against the tenant for his eviction from any accommodation except on one or more of the grounds mentioned in sub-s. (1) 'of that section without the permission of the District Magistrate or of the Commissioner to whom a revision lay against the order of the District Magistrate. Section 5 contained provisions relating to control of rent. The ether provisions of the Act need not be noticed. It has never been disputed that the Act was enacted for affording protection to the tenants against eviction except in the manner provided by the Act. It was also meant to regulate the letting of

accommodation, fixing of rent etc., the provisions relating to which were all intended to confer benefits on the tenants against unreasonable and capricious demands of the landlords. At the same time' it appears that the legislature was conscious of the fact that the Act might retard and slacken the pace of construction of new buildings because the landlords would naturally be reluctant to invest money in properties the letting of which would be governed by the stringent provisions of the Act. It was for that purpose that the saving provision in s. 1-A seems to have been inserted. The essential question that has to be resolved is whether S. 1-A was merely in the nature of an exemption in favour of the landlords, with regard to the buildings constructed after January 1, 1951 and conferred a benefit on them which they could give up or waive by agreement or contractual arrangement and whether the consideration or object of such an agreement would not be lawful within the meaning of s. 23 of the Indian Contract Act.

The general principle is that every one has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. Thus the maxim which sanction the nonobservance of the statutory provision is cuilibet licat renuntiare juri pro se introducto. (See Maxwell on Interpretation of Statutes, Eleventh Edition, pages 375 & 376.) If there is any express prohibition against contracting out of a statute in it then no question can arise of any one entering into a contract which is so prohibited but where there is no such prohibition it win have to be seen whether an Act is intended to have a more extensive operation 'as a matter of public policy. In Halsbury's Laws of England, Volume 8, Third Edition, it is stated in paragraph, 248 at page 143 :

> "As a general rule, any person can enter into a binding contract to waive the benefits conferred upon him by an Act of Parliament, or, as it is said, can contract himself out of the Act, unless it can be shown that such an agreement is in the circumstances of the particular case contrary to public policy. Statutory conditions may, however, be imposed in such terms that they cannot be waived by agreement, and, in certain circumstances, the legislature has expressly provided that any such agreement shall be void."

In the footnote it is pointed out that there are many statutory provisions expressed to apply "notwithstanding any agreement to the contrary", and also a stipulation by which a lessee is deprived of his right to apply for relief against forfeiture for breach of covenant (Law of Property Act, 1925). Section 23 of the Indian Contract Act provides "The consideration or object of an agreement is lawful, unless-

it is forbidden by law; or 69 7 is of such a nature that, if permitted, it would defeat the provisions of any law or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void." It has never been the case of the respondent that the consideration or object of the agreement which was entered, into in June 1963

was forbidden by law. Reliance has been placed mainly on the next part of the section, namely, that it is of such a nature that it would defeat the provision of any law and in the present case it would be s. 1-A of the Act.

Now s. 1-A does not employ language containing a prohibition against or impose any restriction on a landlord and a tenant entering into an agreement that they would not be governed by that section. We concur with the view expressed in Neminath Appayya Hanumannavar v. Jamboorao Satappa Kocheri(1) that the words "if permitted it would defeat the provisions of any law" in s. 23 of the Contract Act defer to performance of an agreement which necessarily entails the transgression of the Provisions of any law. What makes an agreement, which is other-wise legal, void is that its performance is impossible except by disobedience of law. Clearly no question of illegality can arise unless the performance of the unlawful act was necessarily the effect of an agreement. The following observations of Lord Wright in Vita Food Products Incorporated v. Unus Company Ltd.(1) (in Liquidation) are noteworthy in this connection "Nor must it be forgotten that the rule by which contracts not expressly forbidden by statute or declared to be void are in proper cases nullified for disobedience to a statute is a rule of public policy only, and public policy understood in a wider sense may at times be better served by refusing to nullify a bargain save on serious and sufficient grounds."

We are unable to hold that the performance of the agreement which was entered into between the parties in the present case would involve an illegal or unlawful act. In our judgment s. 1-A. (1) A. I.R. [1966] Mysore 154.

(2) [1939] A.C. 277, 293.

was meant for the benefit of owners of buildings which were under erection or were constructed after January 1, 1951. If a particular owner did not wish to avail of the benefit of that section there was no bar created by it in the way of his waiving, or giving up or abandoning the advantage or the benefit contemplated by the section. No question of policy, much less public, policy, was involved and such a benefit or advantage could always be waived. That is what was done in the present case and we are unable to agree with the High Court that the consideration or object of the agreement entered into between the parties in June 1962 was unlawful in view of s. 23 of the Contract Act.

In the result the appeal is allowed, the judgment of the High Court is set aside and that of the trial court restored. The appellant will be entitled to his costs in this, court.

V.P.S. Appeal allowed.