

(1985) 04 OHC CK 0018

In the Orissa High Court

Case No : O.J.C. No's. 2567 of 1981, 1217 of 1982, 1967 of 1983, 1816 and 2008 of 1984

Bengal Immunity Company Limited and Another

APPELLANT

Vs

Parsuram Behera and Others
 Chaitanya Charan Jena
and Others Vs Sk. Mona and Others
 Bibash Rao Vs
Dulari Devi and Others
 Herbertson Limited Vs
Manjulata Tripathy and Others
 Bansidhar Das and
Another Vs Kanduri Singh and Others

RESPONDENT

Date of Decision : 12-04-1985

Acts Referred:

Orissa House Rent Control (Amendment) Act, 1981 — Section 5, 5
Orissa House Rent Control Act, 1967 — Section 1(4)

Citation : (1985) 59 CLT 444 : (1985) 1 OLR 545

Hon'ble Judges : R.C. Patnaik, J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : S.N. Kar and B.N. Prasad in O.J.C. 2567/81 and 1217/82, S.N. Kar, Ambika Prasad Patnaik, Sudhakar Misra and P.K. Lenka in O. J. C. No. 1967/83, S.P. Misra, S.K. Choudhury and S. Latif in O. J. C. No. 1816/84, Ashok Mukherjee, A.K. Misra, in O.J.C. No. 2008/84 and Ashok Mukherjee, A.K. Misra, S.C. Das and S.K. Dash in O. J. C. No. 2030/84, for the Appellant; Addl. Standing Counsel (O.P. No. 2) and B. Dagara, Prasant Mohanty and S. Mohanty (O.P. No. 1) in O.J.C. 2567/81, S.K. Rehenoma, T. Khan, R.C. Das (O.P. No. 1) and Addl. Standing Counsel (O.P. No. 9) in O.J.C. No. 1217/82, B. Panda and S. Misra-1 (O.P. 1 to 3), A.S. Naidu and P. Mohanty in O. J. C. No. 1967/83), B.H. Mohanty, D.K. Bastia, R.N. Panda and R.N. Nayak in O. J. C. No. 1816/84, P.K. Misra and S.S. Rao, (O.P. No. 1) and P.K. Ray, (O.Ps. 2, 3 and 4) in O.J.C. No. 2008/84) and S.S. Basu, B. Ojha, P.K. Misra and S.S. Rao (O.P. No. 1) and P.K. Ray, (O.Ps. 2 to 5) in O.J.C. No. 2030/84, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Mohapatra, J.—The petitioners in these six applications under Articles 226 and 227 of the Constitution of India are tenants against whom their respective land-lords filed proceedings under the Orissa House Rent Control Act, 1967

(hereinafter referred to as "the Act") for eviction. The said proceedings stand at different stages; in four cases, namely, O. J, Cs. 1967/83, 1816/84, 2003/84 and 2030/84 final orders of eviction have been passed against the petitioners, in the other two namely. O. J Cs. 2507/81 and 1217/82 the proceedings are pending before the House Rent Controller.

In all these cases a common question relating to the jurisdiction of the authorities under the Act has been raised on behalf of the petitioners. The question is that the Orissa House Rent Control Act, 1967 (Orissa Act 4 of 1968) having spent its force by efflux of time on 3. 5.1981, the Orissa House Rent Control {Amendment) Act, 1981 (Orissa Act 15 of 1981) purporting to the extend of the life of the former Act till 4. 6. 1968 was in effective. Consequently, according to the petitioner; on and from 4th of May, 1981 there it no House Rent Control Act in force in the State and all proceedings thereunder, at whatever stage they may stand, have become none-est. In view of the seriousness of the question and the impact it is likely to have on the proceedings under the Act throughout the State, fairly lengthy arguments were advanced on behalf of both parties.

2. In order to appreciate the contentions raised by the parties it would be helpfull to trace the history of legislation of the Orissa House Rent Control Act. The Orissa House Rent Control Act, (Orissa Act 31 of 1958) came in to force on 1st of January, 1959 within the municipal limits of the towns of Sambalpur, Berbampur and Cuttack. Section 1(4) of the Act provided that it shall cease to have effect on the expiry of 5 years from the date of its commencement except as respects things done or omitted to be done before the expiration there of and Section 5 of the Orissa General Clauses Act, 1937 shall apply upon the expiry of the Act as if it had then been repealed by an Orissa Act. By Section 2 of the Orissa House Rent Control {Amendment) Act, 1963 (Orissa Act 30 of 1963) the words "five years" occurring in Sec 1(4) of the Orissa Act 31 of 1958 were substituted by the words "eight years". Thereafter by Section 2 of the Orissa House Rent Control (Amendment) Ordinance 1966 (Orissa Ordinance No. 5 of 1966) the words "eight years" were substituted by the" words""eleven years". Since the ordinance was to cease to operate at the expiration of six weeks from reassembly of the legislature, the Orissa House Rent Control Act, 1967 (Orissa Act 4 of 1968) was enacted. The said Act came into force retrospectively with effect from 4. 5. 1967 Section 1(4) of the Act provided that it shall erase to have effect on the expiry of seven years from the date of its commencement except as respects things done or omitted to be done before the expiration thereof and Section 5 of the Orissa General Clauses Act, 1937 shall apply upon the expiry of the Act as if it had then been repealed by an Oriasa Act. By Section 2 of the Orissa House Rent Control {Amendment) Act, 1974 (Orissa Act 10 of 1974) the words "on the expiry of seven years from the date of its commencement" were substituted by the words "on the 4th day of May 1981. Thereafter by Section 2 of the Orissa Reuse Rent Control (Amendment) Act, 1981 (Orissa Act 15 of 1981) the words and figures the 4th day of May, 1981, were substituted by the words

"the 4th day of May, 1988". It is the enforceability of this Amendment Act which we are concerned with in the present cases. Orissa Act 15 of 1981 received the assent of the President of India on 2nd May, 1981 and it was published in the Orissa Gazette on 4. 5. 1981. According to the petitioners the Orissa House Rent Control Act, 1967 (Orissa Act 4 of 1968), as provided u/s 1(4) thereof and as amended by Orissa Act 10 of 1974 was to cease to have effect on the 4th day of May, 1981; Since on the 4th day of May, 1981 the Act had already ceased to have effect the amending Act, Orissa Act 15 of 1981, under which the life of former Act was intended to be extended till 4th May, 1988 could not achieve that purpose and hence was of no effect.

3. From the facts stated above the core question that arises for consideration is whether there was any interregnum between the expiry of Orissa Act 4 of 1968 and the coming into force of Orissa Act. 15 of 1981. If the answer is in the affirmative then the latter Act could not extend the life of the former which was already dead by the time it came into force. According to the submission of the learned counsel for the petitioners, the words 4th day of May" 1981 should be construed to mean the midnight of 3rd/4th of May, 1981 The words "shall cease to have effect" should be construed as meaning that at on no part of the 4th day of May, 1981 Orissa Act 4 of 1968, could be said to be in force. The contention of the learned counsel is that dividing line between the expiry of one. day and commencement of another, howsoever thin it may be that, which is dead on the 3rd of May, 1981 did not survive and was not alive on the 4th of May, 1981. In these circumstances, according to the learned counsel for the petitioners the proper answer to the question should be in the affirmative.

The learned counsel for the opposite parties and the learned Additional Government Advocate appearing for the Tribunals contend that the word shall cease to have effect on the 4th day of May, 1981", fairly construed would include the words 4th day of May, 1981". If this interpretation is accepted, the question of interregnum between the expiry of Orissa Act 4 of 1968 and the coming into force of Orissa Act 15 of 1981 vanishes. Alternatively, it is submitted on behalf of the opposite parties, that even accepting the construction put on behalf of the petitioners, in view of Section 3(2) of the Orissa General Clauses Act, there is no interregnum between the two.

4 In view of the rival contentions raised by the parties, the first question that falls for consideration is the meaning - of the words "it shall cease to have effect on the fourth day of May, 1981", whether u/s 1(4) of the Act on 4. 5. 1981 the Act can be said to be in force or it ceased to have effect on expiry of midnight of the 3rd May, 1981. It is fairly well settled now that use of the words "on" or "from" is not conclusive in the matter of judging whether the day mentioned is intended to be included or to be excluded. It depends on the contest in which the word is used and the purpose for which the provision is enacted. It is a well settled canon of interpretation of statute that a beneficent statute is to receive a broad interpretation. Where the legislation is designed to give relief against

certain kind of mischief the Court must construe the statute as to give meaning to it and not render it infructuous or redundant. For this purpose aid also can be taken from the objects and reasons of the Act.

As it is stated in the Act, the Orissa House Rent Control Act, 1967 is an act to provide to control house rent in the State of Orissa. It is a well recognised position that the rent control legislations have been brought on the statute book with the avowed object of ameliorating the lot of tenants by affording them remedies against the rent demanded by the landlords. The state is a piece of social legislation aimed at ceasing the problem of accommodation protecting the tenants from eviction inspired by profit hunted motives and to provide certain safeguards for the tenants. While not completely overlooking the interest, of the landlord which is apparent from the provisions to the effect that under certain conditions a clear right to the landlord is granted to seek eviction on proving the grounds stated in the section.

The statute with which we are concerned in the present proceeding, the Orissa House Rent Control Act, 1967, is undoubtedly a temporary statute with a fixed duration. As noticed earlier, the life of the statute has been extended from time to time since continuance of the beneficent legislation was considered necessary by the legislature. With this end in view the legislature enacted the Orissa House Rent Control (Amendment) Act, 1981 (Orissa Act 15 of 1981) which, as noticed earlier, received the assent of the President on 2nd May, 1981 and was published in the official Gazette on the 4th May, 1981. It is no doubt true that the previous enactments extending the life of the act the expression used was it shall cease to have effect after expiry of five years or eight years or eleven years, under Orissa House Rent Control (Amendment) Act, 1974 (Orissa Act 10 of 1974) a specific date i.e., 4th day of May, 1981 was mentioned. This may prima facie indicate a position that the legislature intended that the statute shall not have effect even on the 4th May, 1981, But the purpose under both the provisions remained the same, i.e., to specify the period during which the Act shall remain in force. When a statutory provision is meant to specify a period it is normally, taken as inclusive of the date mentioned in the provision. As such, in the present case it has to be taken that the Orissa House Rent Control Act, 1957 was in force on 4th May, 1961. Accordingly, the contention of the learned counsel for the petitioners that the Orissa House Rent Control Act, 1967 ceased to have effect on the expiry of midnight of 3rd/4th of May, 1981 has to be rejected as without, substance.

5. In view of the aforesaid conclusion it is not necessary to examine the alternative contention raised on behalf of the opposite parties referring to Section 3(2) of the Orissa General Clauses Act, 1937.

6. The learned counsel for the petitioners cited a number of decisions wherein the term "cease to have effect" has been construed to mean that the statute becomes wholly inoperative or void after the appointed date. These decisions, in our view, are not relevant for the purpose of this case since the question for consideration here is not the effect or consequence of the statute ceasing to have

effect but question is, at what point of time the provision became operative. As such, it is unnecessary to deal with these decisions in detail. The learned counsel has also cited some decisions on the point that to a temporary statute such as the Orissa . House Rent Control Act, 1967, the principles of Section 5 of the Orissa General Clauses Act, 1937 (Section 6 of the General Clauses Act, 1897) has no application. This question need not detain us for long- As observed by the Supreme Court in the case of Gopi Chand Vs. The Delhi Administration, the general rule with regard to a temporary statute is that in the absence of special provision to the contrary, proceedings which are being taken against a person under it ipso facto terminate as soon as the statute expires. It is true that the legislature can and often enough does avoid such an anomalous consequence by enacting in the temporary statute a saving provision and the effect of such saving provision is in some respect similar to the effect of the provisions of Section 6 of the General Clauses Act, which deals with the effect of repeal of a permanent statute. Dealing with the question in another case, State of Orissa Vs. Bhupendra Kumar Bose, , the Court observed thus :

"But the general rule about the effect of the expiration of a temporary act is not inflexible and admits of exceptions. What the effect of the expiration of a temporary act would be must depend upon the nature of the right or obligation resulting from the provisions of the temporary Act and upon their character whether the said right and liability are enduring or not. Therefore, in considering the effect of the expiration of a temporary statute it would be unsafe to lay down any inflexible rule. If the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired. If a penalty had been imposed upon a person, the imposition of the penalty would survive the expiration of the statute. That appears to be the true legal position in the matter."

A similar view has been taken by the Andhra Pradesh High Court in the case of Union of India New Delhi and Others Vs. Thammana Sitaramanjaneyulu and Others, .

"Unless a temporary Act contains some provision to the contrary after the expiry of a temporary Act, it in its entirety ceases to have any further effect and no pending proceedings can be continued nor fresh proceedings can be initiated upon such an expired Act. Expiry of the temporary Act does not, however make the statute dead for all purposes. The nature of the right created by the temporary Act, or obligation arising out of the provisions thereof and their character may have to be taken into account to determine whether any right or obligation under the Act is ended spite of the expiry of the Act or not. The effect of expiry of a temporary Act depends upon the construction of the Act itself. When a temporary Act expires, Section 5 of the General Clauses Act which in terms is limited in its application only to repeals has no application to an expiry of a temporary statute. Nevertheless the temporary Act may provide for its survival even after its expiry in regard to transactions which took place during the time

when that temporary Act was in force."

Applying the principles laid down in the case referred to above to the statute in question, it is expressly provided u/s 1(4) of the Act that it shall cease to have effect on the 4th day of May, 1981 except as respects things done or omitted to be done before the expiration thereof and Section 5 of the Orissa General Clauses Act 1 of 1937 shall apply upon the expiry of this Act as if it had been repealed by an Orissa Act. It is thus clear that the intention of the legislature was to save the rights and obligations already accrued due under the Act even , after its expiry. Further, this point becomes academic in view of our conclusion that there was no gap or vacuum of interregnum between expiry of Orissa House Rent Control Act, 1967 as extended by Orissa Act 10 of 1974 and the enforcement of Orissa House Rent Control {Amendment} Act, 1981 (Orissa Act 15 of 1981).

7. In view of the aforesaid analysis, the conclusion is inescapable that the impugned orders of eviction passed and the proceeding for eviction pending against the petitioners are not rendered invalid due to the expiry of the Orissa House Rent Control Act, 1957 as contended by the petitioners.

8. In the result, the writ petitions fail and they are dismissed as devoid of merit. Both parties shall bear their respective costs of these proceedings.

R.C. Patnaik, J.

9. I agree.