
(1953) 10 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Writ Petition No. 37 of 1953

Govinda and Others

APPELLANT

Vs

Board of Revenue, Rajasthan

RESPONDENT

Date of Decision : 20-10-1953

Acts Referred:

Rajasthan (Protection of Tenants) Ordinance, 1949 — Section 12, 6(1), 7, 7(1)

Citation : AIR 1954 Raj 141 : (1954) RLW 259

Hon'ble Judges : Wanchoo, C.J.; Sharma, J.; Bapna, J

Bench : Full Bench

Advocate : Mathuresh Beharilal and D.M. Bhandari, for the Appellant; C.B. Bhargava, Dy. Govt. Advocate and C.L. Agarwal, Intervener, for the Respondent

Judgement

Wanchoo, C.J.—The following point has been referred to the Full Bench for answer :

"Whether the protection afforded by Section 7 of the Rajasthan (Protection of Tenants Ordinance, 1949, is also available in case of dispossession of a person in occupation of the holding on or after the 1st day of April, 1948, as tenant as defined in the Ordinance when such dispossession is made by a person other than the landholder, e.g. a trespasser?"

2. Section 7(1) of the Ordinance, as amended up-to-date, reads as follows :

"Any tenant who being in occupation of his holding on or after the first day of April, 1948, has thereafter been ejected therefrom, or dispossessed thereof or from or any part thereof-

(a) before the commencement of this Ordinance, otherwise than by process of law, or

(b) after the commencement of this Ordinance in contravention of the provisions thereof

may, within three months from the date of such ejectment or dispossession or

the commencement of this Ordinance, whichever happens to be later, apply to the Sub-Divisional Officer or other Officer of equal status for his reinstatement in such holding or part as the case may be."

This section, as it stands, does not specify who the person ejecting should be before a tenant can take advantage of it. It is, however, urged that the scheme of the Act is to afford protection to tenants from ejectment by landholders, and though the language of Section 7(1) may be wide, we should put in the words "by his landholder after the words "any part thereof in order to carry out the intention of the legislature. We have, therefore, to look at the scheme of the Act and see whether it was the intention, of the legislature to restrict Section 7(1) to ejectments by land-holders only, or whether the intention was what is conveyed by the very wide words used in the section.

3. The Ordinance was enacted "to provide for the protection of tenants from ejectment from their holdings." There is no indication here that this ejectment, against which protection was being afforded, was to be by landholders only. In the preamble, however, it is said that

"with a view to putting a check on the growing tendency of landholders to eject or dispossess tenants from their holdings and in the wider national interest of increasing the" production of foodgrains, it is expedient to make provisions for the protection of tenants in Rajasthan from ejectment or dispossession from their holdings."

Reliance is placed on these words in the preamble, and it is urged that the intention was to stop ejectment of tenants by their landholders, but it must be noted that this was only one of the reasons for enacting this law. The second reason, which was given in the preamble, was that protection was being afforded to tenants in the wider national interest of increasing the production of foodgrains. So far as this reason is concerned, it was immaterial who was the person ejecting, whether a landholder or a third person. It cannot, therefore, in our opinion be said with any force that the preamble indicates that the intention was merely to protect tenants from ejectment by landholders.

4. Coming to the sections of the Act, we find that Section 1 gives the short title, extent, commencement and operation of the Act. Section 2 gives definitions. Section 3 is important and provides that the provisions of this Ordinance and of rules made thereunder shall have effect notwithstanding anything contained to the contrary in any other law or rule, order, instrument or usage having the force of law, in any part of Rajasthan. This section clearly provides that this Ordinance would prevail over any other law in force in Rajasthan, and would thus cover those laws which provide for retaking of possession by tenants from trespassers.

4a. Then we come to Section 4(1). That section provides that so long as the ordinance remains in force, no tenant shall be liable to ejectment or dispossession from the whole or a part of his holding on any ground whatsoever. Sub-section (2) of Section 4 makes some exceptions to the provisions of Section

4(1). This section certainly applies only to tenants; but as the object of the Ordinance was to protect tenants, it can properly apply to tenants only. The fact, therefore, that this section applies only to tenants, does not in any way affect the interpretation of Section 7(1) of the Ordinance.

5. Then comes Section 5 which provides that all suits, appeals etc. for the ejectment of tenants pending on the date of the commencement of the Ordinance shall be temporarily consigned to records. This section again refers only to suits etc. against tenants, and this was quite natural as protection was being afforded to tenants. The fact, therefore, that this section was confined to tenants would again, in our opinion, make no difference to the interpretation of Section 7(1).

6. Then comes Section 6 which provides that all decrees and orders for ejectment, which have not been fully executed, shall remain in abeyance and their execution shall be stayed so long as the Ordinance remains in force. This section does not specifically say that the decrees and orders for ejectment should be against tenants. But from the context it is clear that it only applies to decrees and orders for ejectment against tenants as denned in the Act and to no others.

This would be further clear from Section 12 of the Ordinance, which says that nothing in the Ordinance shall apply to a trespasser, which term is also defined in the Ordinance. Therefore, even if an argument were raised that Section 6 was general in terms and applied to all decrees and orders for ejectment and not merely to decrees and orders against tenants, the answer would be found in Section 12 which says that nothing in the Ordinance shall apply to a trespasser. Section 12 appears to have been .put in, in order to qualify the general words of Section 6.

7. Then we come to S, 7 which has already been set out above. We have indicated that the words used in this section are general. Whether Section 12 of the Act has any effect on the generality of the words used in this section in the same way as it has on Section 6 is a matter which we shall consider later. But a perusal of Sub-section (2) to Section 7 shows that the general words used in Sub-section (1) included ejectment by any person and not necessarily by a landholder. Sub-section (2) provides that on receipt of an application under Sub-section (1), the Sub-divisional Officer shall give notice to the landholder and to the person, if any, in possession of such holding, and shall on being satisfied after such summary inquiry as he may consider necessary that the applicant was ejected or dispossessed as aforesaid, order the applicant to be reinstated and the other person in possession of the holding to be ejected.

Now if the intention of the framers of the Ordinance was that protection would only be afforded against a landholder, there was no necessity of notice to any third person as provided by Sub-section (2). Notice to the landholder alone would have been sufficient for he was the person ejecting. It may be urged that notice to the third person was necessary in those cases where the landholder put

in a third person after ejecting a tenant. But, if the third person was only a representative of the landholder and put in possession by the landholder, notice to this third person was not, in our opinion absolutely essential, though it might have been considered proper to give such notice.

Besides, there are no words in Sub-section (2) to suggest that the person in possession was some one necessarily on behalf of the landholder; otherwise, if the intention was to confine the benefit of Section 7(1) only to those cases where the person, ejecting was the landholder, the position would have been made clear by adding the words "on behalf of the landholder" after the words "in possession of such holding or part" in Sub-section 2. In the absence of any such qualifying words, it would not, in our opinion, be correct to hold that the person in possession, to whom also notice is provided, is necessarily some one put in possession on behalf of the landholder. The other Sub-sections of Section 7 are not material on the question of interpretation, and we need not, therefore, refer to them.

8. Then comes Section 8 which provides for rents-payable by tenants on re-instatement, and is thus consequential to Section 7. Section 9 is also consequential to Section 7 as it provides for rights of tenants on reinstatement. Section 10(1) provides that no appeal shall lie from any order of the Sub-divisional Officer, while Section 10(2) gives powers of revision to the Board of Revenue. Section 11 gives powers to the Government to make rules.

Then we come to Section 12 which is in these words:

"Nothing in this Ordinance shall apply to a trespasser or to a tenant who has been dispossessed of his holding or a part thereof for the reason that the land has been acquired by the Government for any public purpose."

9. Great stress is being laid on Section 12. It is said that when this section provides that nothing in this Ordinance shall apply to a trespasser, it means that where the person ejecting is a trespasser, the Ordinance shall not apply. We do not think that the words used can be given that meaning. It seems to us that the intention was; to emphasise that the benefits of the Ordinance shall not accrue to a trespasser and no trespasser would come forward as an applicant under any of the provisions of the Ordinance.

It is said that if this was the meaning to be applied to the words in Section 12, it was unnecessary to enact it so far as the trespasser was concerned, because it was clear that the various sections on the face of them did not apply to a trespasser. This argument, however, is without force, for we have already shown that Section 6(1) could with some show of force be urged to apply even to trespassers for its language was very wide. Therefore, enactment of Section 12 excluding trespassers from the benefit of the Ordinance was, in any case, necessary. That the intention was to exclude trespassers from the benefit of this Ordinance is also clear from the fact that the rest of this section is meant to exclude the tenants, who have been dispossessed for the reason that the land

was acquired by the Government for any public purpose, from the benefits of this Ordinance.

We do not think that the words "nothing in this Ordinance shall apply to a trespasser" mean that a trespasser could not even be made an opposite party where he had ejected a tenant. We, therefore, think that the wide words used in Section 7(1), which are clearly capable of interpretation that the tenant can take advantage of this Ordinance whoever may be the person ejecting him, whether the landholder or somebody on behalf of the landholder, or a rank trespasser, are not in any way, cut down by Section 12. We think that Section 12 was, in any case, necessary, so far as it relates to trespassers, in order to cut down the wide words used in Section 6(1). But the words used in Section 12 do not, in our opinion, cut down the amplitude of the benefit given to tenants u/s 7(1).

10. Then we come to Section 13 which gives power to Government to withdraw the Ordinance any time, and Section 14 which provides for the application of Section 6 of the General Clauses Act on the withdrawal or expiry of the Ordinance.

11. This analysis of the entire Ordinance does not, in our opinion, lead to the conclusion that Section 7(1) was made only to benefit the tenants when they were ejected by landholders, and not for those cases where the tenants were ejected by trespassers. In this connection, we may refer to the following remark in an unpublished decision of this Court in -- "Jhunta v. Board of Revenue", since reported in Jhunta and Another Vs. Board of Revenue, to which one of us was a party:

"It is apparent from the language of the section that it is only a trespasser who is dispossessed of his holding that is precluded from taking recourse under this law. It does not mean that if a tenant is dispossessed by a trespasser at the instance of the landholder, the Ordinance would not apply. If the view propounded by the applicants" learned advocate be allowed, it would mean that the landholders would be able to dispossess their tenants by instigating third persons and in that case the whole object of this Ordinance would be defeated."

It is obvious that if it was not possible for a tenant to seek remedy against a trespasser u/s 7(1), the benefit intended to be conferred by the Ordinance on tenants would become illusory, for the landholders could arrange for ejectment of tenants through third persons, and see that their connection with the third persons was not established. In such cases, it would not be possible to say that the ejectment was by the landholder as there might be no proof of instigation of the third person by the landholder, though in fact this may be so. We are, therefore, of opinion that Section 7(1), as it stands, clearly provides for the protection of tenants against their ejectment by trespassers also.

There seems to us no difficulty in holding this on the wide language used in Section 7(1) as well as on principle. If the Ordinance was providing protection to a tenant against a landholder who has the best right to eject the tenant, there

seems to be no valid reason why protection should not have been provided against trespassers who had, in any case, no right to eject the tenant. Such protection, in our opinion, is implicit in the wide words used in Section 7(1), and there is nothing in the Ordinance which compels us to cut down that protection, and we, therefore, see no reason why we should do so.

12. We may now refer to certain cases of this Court, which have been cited in support of the view that, where the person ejecting is a trespasser, Section 7(1) does not apply.

The first case is Kishen Singh Vs. Dungaria and Karinga, That is a Single Judge decision, and the learned Judge was mainly concerned with the interpretation of Section 5 of the Ordinance. The question there was whether the District Judge was right in consigning the appeal to the records u/s 5 of the Ordinance. The learned Judge dealt with Sections 4, 5 and 6 and pointed out that those sections applied only to cases where relation of landlord and tenant existed or was alleged to exist between the parties, but did not apply to a case where the ejectment of a person from an agricultural land was sought on the allegation that he had taken forcible possession of the land. The words used by the learned Judge were rather wide, but, if read in the context in which they were used, namely the interpretation of Section 5, they are clearly correct.

The learned Judge was not concerned at all in that case with the interpretation of Section 7(1), and the remarks, that he has made, must in our opinion, be confined only to a case u/s 5 with which he was dealing. So read, there is nothing incorrect in what he has said. What learned counsel wants is to extend the words used in that case to the interpretation of Section 7 (1), but that, in our opinion, is not permissible. As is well settled, the generality of the words used in a judgment are always controlled by the particular facts and circumstances of the case, and this is how the wide words used in that case have to be interpreted.

13. The next case, to which reference may be made, is -- "Hardeo v. Rajasthan Revenue Board" RLW 1953 SC 223. That was a case where Onkar and Madho claimed to be in possession of certain field by virtue of having purchased it from Hardeo. Later Hardeo dispossessed them by force on 5-9-1950. They then applied for reinstatement u/s 7(1), and the question arose whether they could take the benefit of Section 7(1). The learned Judges pointed out that the benefit of Section 7(1) could only be taken by a tenant, and as the applicants in that case did not claim to be tenants in occupation, the Ordinance did not apply, and the revenue courts, therefore, had no jurisdiction to act under it. During the course of the judgment, however, the following words were used:

"It may be observed that u/s 7 of the Tenants Protection Ordinance the court of Sub-Divisional Officer could grant relief only when there had existed relationship of a landlord and tenant between the parties."

The learned Judges went on to observe that in the case before them there was no mention as regards tenancy in the application of Onkar and Madho, and there

was no fact in their petition which could give jurisdiction to the Revenue Courts to grant the relief of reinstatement u/s 7(1).

Learned counsel strongly relies on the words the revenue court could grant relief only when there existed relationship of a landlord and tenant between the parties". If these words are read in the context in which they are used, there should be no quarrel with them. The learned Judges were considering whether the benefit of Section 7(1) could be taken by persons who had purchased the field, but who did not claim in their application to be tenants. It was in that connection that it was said that the benefit of Section 7(1) could only be given to a person who claimed to be a tenant.

The words actually used were, if we may say so with respect, somewhat wide; but the question before the learned Judges was not whether a tenant could get protection against a trespasser who had ejected him, but whether the person, who did not claim to be a tenant, could get the benefit of Section 7(1), and the rather wide words used must be confined to the facts and circumstances as they existed in the case. Read in that light this decision cannot be taken to lay down that where the person ejecting is a trespasser, Section 7(1) cannot be used.

14. The next case is -- *Bhoransingh Vs. Revenue Board of Rajasthan*, The questions raised in that case were altogether different. There are no observations in that case, which have any relevance to the question referred to us, as that was a case between a tenant and a landlord.

15. The next case is -- *Ghamandi and Another Vs. Parshadi and Others*, . In that case also the question.- raised were altogether different. The petitions in that case were filed by landlords against tenants, and they claimed that the Ordinance was invalid in view of Articles 14 19 and 31 of the Constitution. It was held that the Ordinance was valid and was not hit by these articles. The question whether Section 7(1) applied to cases of ejectment by trespassers never arose for decision in that case.

16. The last case is -- *Lachman Singh Vs. Ghisa Bai*, to which one of us was a party. In that case, protection was sought against a trespasser, and though there was no argument on the point, Section 7(1) was applied in favour of the tenant and even where he was ejected by a trespasser. The main question, however, that came up for decision was whether the amendment made in 1952 to S, 7 (1) had a retrospective operation with respect to pending cases.

17. Lastly, we may refer to the unreported decision in "*Jhunta v. Board of Revenue*" since reported in *Jhunta and Another Vs. Board of Revenue*, which we have already quoted. In that case, the view was taken that Section 7(1) would give protection even against ejectment by trespassers, though it was found as a fact that the third person had acted on the instigation of the landholder. The case is, therefore, slightly different from the question before us, but the view taken was in favour of Section 7(1) being used against a trespasser ejecting a tenant also.

18. There is thus no direct decision of this Court against the view that we are taking. Reliance was placed only on certain remarks here and there in certain cases where the point referred to us did not directly arise. On a careful consideration, therefore, of the words of Section 7(1) and the entire scheme of the Ordinance, we have no hesitation in coming to the conclusion that Section 7(1) applies to cases where a tenant is ejected by a trespasser, and not merely to cases where a tenant is ejected by, or at the instance of, a landholder.

19. Reliance is also placed on -- "Kanshi Ram v. Bhagtu" AIR 1952 J&K. 44, where it was held that an application u/s 57-A could be filed only if the tenant was dispossessed by a landlord otherwise than in due course of law, but if a tenant was dispossessed by a person other than the landlord he could not invoke Section 57-A, Tenancy Act, in order to regain his possession. Unfortunately, we are not in possession of the Tenancy Act, the section of which was interpreted in this case. Further. Section 57-A, which has been interpreted, has not been quoted in the judgment, and this authority, therefore, is of no help to us one way or the other. The interpretation, that has been given, depends on the interpretation of the wordings of the section, and we do not know what those words are.

20. The principles, which govern the interpretation of statutes, are well settled. In --Debendra Narain v. Jogendra Narain" AIR 1938 Cal 593, the following rule was quoted with approval:

"It is only when any part of the Act of Parliament is penned obscurely and when other passages can elucidate that obscurity, that recourse ought to be had to such context for that purpose. No rule of construction can require that when the words of one part of a statute convey a clear meaning it shall be necessary to introduce another part of a statute for the purpose of controlling or diminishing the efficacy of the first part." (p. 620)

21. in -- AIR 1944 35 (Privy Council) their Lordships of the Privy Council have laid down the rule for construction of Remedial Statutes like the present in the following words at p. 38:

"The words of a remedial statute must be construed so far as they reasonably admit so as to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved."

22. Applying these principles we are of opinion that there is no reason to cut down the wide amplitude of Section 7(1) affording protection to tenants, whether it be against ejectment by landholder or at the instance of landholders, or by third persons who are trespassers.

23. Our answer, therefore, to the question referred to us is that the protection afforded by Section 7 of the Rajasthan (Protection of Tenants) Ordinance, 1949, is also available in case of dispossession of a person in occupation of the holding on or after the 1st day of April, 1948, as tenant as defined in the Ordinance

when such dispossession is made by a person other than the landholder, e.g. a trespasser.