

(1981) 04 MP CK 0023

In the Madhya Pradesh High Court

Case No : Civil Revision No. 88 of 1981

Ibrahimbhai

APPELLANT

Vs

Sajjad Hussain

RESPONDENT

Date of Decision : 30-04-1981

Acts Referred:

Madhya Pradesh Gandhi Basti Kshetra (Sudhar Tatha Nirmulan) Adhiniyam, 1976 —
Section 20(b)

Citation : (1982) MPLJ 529

Hon'ble Judges : H. G. Mishra, J

Bench : Single Bench

Advocate : R. G. Waghmare with V. D. Gyani, for the Appellant; R. S. Garg with
Fazal Hussain, for the Respondent

Final Decision : Dismissed

Judgement

H. G. Mishra, J.

This revision by the judgment-debtor is against the order dated 30-I-1981, whereby the Executing Court has rejected his objection regarding non-executability of the decree for eviction in view of the provisions of section 20(b) of the Madhya Pradesh Gandhi Basti Kshetra (Sudhar Tatha Nirmulan) Adhiniyam, 1976 (Act No. 39 of 1976).

Facts essential for the decision of this revision are as under : The decree-holder - non-applicant instituted Civil Suit No. 257A of 1973 on 1-10-1973 in the Court of the Third Civil Judge, Class II, Indore, for eviction from the premises bearing Municipal No. 69 /2, situated in Champabagh, Indore, against the revision-applicant. The applicant submitted a written-statement on 29-1-1974 inter alia raising various pleas to show that the decree-holder-non-applicant has no right to eject him. By an application dated 4-11-1976 the applicant sought permission to raise a plea to the effect that by virtue of Notification issued u/s 3 of the Madhya Pradesh Slum Improvement (Acquisition of Land) Act No. 32 of 1956, neither the non-applicant has right to maintain the suit nor the Court had

jurisdiction to try the same, as the land, including the structure thereon has vested in the State Government. This amendment was allowed and the objection so permitted to be raised formed subject-matter of an additional issue raised on 6-1-1977. Thereafter the applicant, absented himself and ultimately ex-parte decree for eviction was passed against him on 6-5-1977. In para 10 of its judgment the trial Court negatived the plea raised by the defendant on the basis of the provisions of the Act No. 32 of 1956.

Thereafter the applicant submitted an application under Order 9, Rule 13, CPC on 9-6-1977, which was registered as M. J. C. No. 26 of 1977. This application was rejected by order dated 23-3-1978. Miscellaneous Appeal No. 47 of 1978 and Civil Revision No. 145 of 1979 preferred by the applicant against the aforesaid order of rejection of his application for setting aside the ex-parte decree were dismissed by order dated 25-1-1979 by the Additional District Judge and that dated 15-11-1979 by this Court respectively. Thus, the decree for eviction passed ex-parte against the applicant attained finality.

In execution proceedings relating to the said decree, the judgment-debtor-applicant raised an objection to the effect that the decree is inexecutable in view of the provision of section 20 of Act No. 39 of 1976, because no permission in writing of the Competent Authority to execute the decree has been obtained by the decree-holder. This application was opposed by the decree-holder-non-applicant and has been rejected by the impugned order. Hence this revision.

In this revision it was contended by Shri R. G. Waghmare, assisted by Shri V. D. Gyani, learned counsel for the applicant that the impugned order is illegal and without jurisdiction; that section 20(b) of the Act No. 39 of 1976, has been wrongly construed; that by virtue of the provisions of section 10 read with section 25 of the Madhya Pradesh General Clauses Act No. 3 of 1958, the Notification issued u/s 3 of the Act No. 32 of 1966 ought to have been deemed to have been a Notification within the contemplation of section 20(b) of the Act No. 39 of 1976 and since the decree-holder-non-applicant has not shown to have obtained the permission in writing of the Competent Authority to execute the decree, the Executing Court could not proceed with its execution.

Shri S. L. Garg, assisted by Shri F. Hussain, learned counsel for the non-applicant, submitted that none of the aforesaid contentions have any force.

Having heard the learned counsel for the parties I have come to the conclusion that this revision deserves to be dismissed.

The Madhya Pradesh Gandhi Basti Kshetra (Sudhar Tatha Nirmulan) Adhiniyam No. 39 of 1976, received the assent of the President on 29-7-1976 and came into force with effect from 12-8-1976, when it was published in the Madhya Pradesh Government Gazette (Extra-ordinary), section 20(1) of the Act No. 39 of 1976, reads thus:

S. 20-(1) Notwithstanding anything contained in any other law for the time being

in force, no person shall except with the previous permission in writing of the competent authority,-

(a) institute any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or

(b) where any decree or order is obtained in any suit or proceedings instituted before declaration of such area to be slum area u/s 3 for the eviction of a tenant from any building or land in such area, execute, such decree or order.

Now, placing reliance on clause (b) of section 20(1) of the Act No. 39 of 1976, it is contended by the judgment-debtor-applicant that the suit premises are situated in a slum area; that although the decree was obtained prior to commencement of the Act, yet the decree being for eviction of a tenant from any building or land situated in slum area, cannot be executed without the previous permission in writing of the Competent Authority and since no such permission has been produced, the Executing Court had no jurisdiction to proceed with its execution. It is also contended that although there is no Notification declaring the area where the suit premises are situated as a slum area u/s 3 of the Act No. 33 of 1976, the Notification containing the declaration to that effect issued under the provisions of the Act No. 32 of 1956, dated 7-9-1962 and 6-12-1963 should be deemed to be declarations for the present purposes with the aid of section 10 read with section 25 of the Madhya Pradesh General Clauses Act, 1957. This contention appears to be attractive on the face of it, but is devoid of substance.

In order that the prohibition enacted by clause (h) of section 20(1) of the Act No. 39 of 1976 may become operative, it is necessary to prove co-existence of the following conditions : (i) a decree or order is obtained in any suit or proceeding; (ii) such a decree or order should be for eviction of a tenant from any building or land; (iii) that that building or land should be situated in a slum area, and (iv) that that slum area should have been declared as a slum area u/s 3 of the Act No. 39 of 1976. If all the aforesaid, conditions are fulfilled, the prohibition enacted by clause (b) of section 20(1) of the Act No. 39 of 1976, will begin to operate to preclude the decree-holder-non-applicant from executing the decree or order as the case may be, except with the previous permission in writing of the Competent Authority. It is true that the Collector, Indore, has been declared as the Competent Authority inter alia for purposes of sections 3 and 20 of Act No. 39 of 1976. However, the provisions of section 20(1)(b) cannot be regarded to be applicable to the situation because the area in which the suit premises are situated is not shown to have been declared as a slum area u/s 3 of the Act No. 39 of 1976. It is declaration of the area as slum area u/s 3, which is of vital significance. In absence of such a declaration, it cannot be regarded that the decree-holder is within the mischief of section 20(1)(b) of the Act No. 39 of 1976. What section 20(1)(b) postulates as a condition precedent for bringing it into operation is a declaration u/s 3 of the said Act.

The contention advanced by Shri Waghmare is to the effect that the notifications

issued under the provisions of the Act No. 32 of 1956, should be deemed to be notifications declaring the area where the suit premises are situated as a slum area u/s 3 of the Act No. 39 of 1976 and should be treated as sufficient to bring into operation the provisions of section 20(1)(b). Acceptance of this contention will involve re-writing of the clause (b) of section 20(1). One will be required to read into section 20(1)(b) the expression "or after declaration of such area to be slum area" under the provisions of the Act No. 32 of 1956 also. This is not shown to be legally permissible mode of construction of a statute. It is not for the Courts to add something into the statute under the garb of putting a construction on a statute. By use of the expression "declaration of such area to be slum area" u/s 3, in section 20(1)(b) the framers of the law have, in their wisdom, restricted the prohibition imposed on the landlord to execute the decrees for eviction to those cases only where the suit premises to which it relates are situated in an area declared to be a slum area u/s 3 of the Act No. 39 of 1976 only. The scope of the prohibition cannot be enlarged. The acceptance of the contention advanced by Shri Waghmare will result in widening the scope of the Legislative prohibition in question.

So far as reliance on the provisions of section 10 and section 25 of the M. P. General Clauses Act, 1957, is concerned, it cannot be regarded to be available to the applicant either. Section 10 reads thus:

S. 10. Effect of repeal.-Where any Madhya Pradesh Act repeals any enactment then, unless a different intention appears the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability, acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Madhya Pradesh Act had not been passed." (Emphasis supplied)

Now, section 10 and section 25 of the M. P. General Clauses Act, 1957, are substantially similar to section 6 and section 24 of the Central General Clauses Act, 1907, respectively. The expression "unless a different intention appears" occurs both in section 6 of the Central Act as well as in section 10 of the M. P.

General Clauses Act, 1957: In the context of section 6 of the Central General Clauses Act, it has been held in *State of Punjab v. Mohar Singh* AIR 1955 SC 84, thus:

Whenever there is a repeal of an enactment, the consequences laid down in section 5 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities, but whether it manifests an intention to destroy them. The Court cannot therefore subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material.

The aforesaid construction will govern that of section 10 of the M. P. General Clauses Act, 1957, also.

In this connection on behalf of the revision-applicant reliance was placed on the following ratio of *Munshi Lal Beni Ram Glass Works Vs. Sri S.S. Singh, Assistant Labour Commissioner and Others*, :

The Supreme Court cannot subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out whenever there is a repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the proposition of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material.

What flows from the ratio quoted above is that if the new legislation manifests an intention incompatible with or contrary to the proposition of the section, Section 6 of the Central Act and for the same reason section 10 of the M. P. General Clauses Act will not be applicable.

Now, the Act No. 39 of 1976, repeals the Act No. 32 of 1966. However, section 20(1)(b) of the repealing Act clearly manifests an intention incompatible with or contrary to the proposition of the aforesaid section. As such, the attempt to invoke the aid of the provisions of section 10 of the M. P. General Clauses Act, 1957, cannot be permitted to succeed.

So far as the question of applicability of section 25 of the M. P. General Clauses

Act, 1957, is concerned, it reads as under:

Section 25.-Continuation of orders, etc., issued under enactment repealed and re-enacted. - Where any enactment is repealed and re-enacted by a Madhya Pradesh Act with or without modification, then, unless it is otherwise expressly provided any appointment, notification, order, scheme, rule, regulation, form or bye-law made or issued under the repealed enactment shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, regulation, form or bye-law made or issued under the provisions so re-enacted.

(Emphasis supplied)

Section 25 performs the function of a deeming clause This is clear by the use of the term "deemed" therein. However, in order that the statutory fiction contained in this section is made operative, it is necessary that the re-enacted statute should not expressly provide otherwise and also that the Notification claimed to be continued by virtue of section 25, should not be inconsistent with the provisions re-enacted. This is made abundantly clear by use of the expressions "unless it is otherwise expressly provided" and "so far as it is not inconsistent with the provisions re-enacted" therein.

Accordingly, if a Notification issued under the repealed Act is either inconsistent with any of the provisions re-enacted or the repealing enactment expressly provided otherwise, the Notification cannot be deemed to be continued by vigour of section 25 of the M. P. General Clauses Act, 1957. From the language employed in section 20 of Act No. 39 of 1976, it is clear that it does not appear to have created a fiction. The Courts also cannot engraft such a fiction on it. I am fortified in the view I am taking by the following ratio in *Godhra Electricity Co. Ltd. Vs. Somalal Nathji Shiroiya and Others*, :

Section 24 of General Clauses Act continues orders and actions which are not inconsistent with the re-enacted provisions by introducing a fiction that they will be deemed to be issued under the re-enacted provisions and will therefore be continued in force not by the operation of the repealed Act but of the new Act. The order issued under old section 57 clearly falls within section 6 of the General Clauses Act and section 24 cannot be invoked unless the Legislature had created such a fiction.

That apart, the object which the Act No. 32 of 1956 had to achieve was different than that sought to be achieved by the Act No. 39 of 1976. The former Act aimed at acquisition of land in slum areas duly declared under the Act in the manner and for the purpose indicated therein; whereas the latter Act aims to provide for improvement and clearance of slum areas in the State and for protection of tenants in such areas from eviction by making provisions considered adequate to achieve that objective. Moreover, the former Act did not contain any provision corresponding to section 20 of the latter Act. The latter Act appears to have been

enacted to achieve the somewhat different objective and has been re-enacted in somewhat different terms. Accordingly, the provisions placed in its section 20 will operate as repeal of the Notification issued under the former Act. The Notifications relied on by Shri Waghmare appear to be such which cannot be reconciled and made to stand together with the provisions of section 20 of the Act No. 39 of 1976. Moreover, the provisions of section 20(1)(b) of the Act No. 39 of 1976 are prospective in character and benefit therein can be claimed only on a declaration of slum area being made under its section 3. For all these reasons the Notifications relied on by Shri Waghmare, cannot be deemed to be continued either by virtue of section 10 or section 25 of the Madhya Pradesh General Clauses Act, 1957.

As a result of the discussion aforesaid, this revision fails and is hereby dismissed. In view of the nature of controversy, I direct the parties to bear their own costs as incurred, so far as this Court is concerned. The record of the case be remitted back to the Courts" below within ten days from today.