
(1956) 04 PAT CK 0018

In the Patna High Court

Case No : A.F.A.O. No"s. 305 of 1951, 162 of 1953 and 416 of 1954

Jotindra Nath Das and Others

APPELLANT

Vs

Lala Prasad Sao and Others

RESPONDENT

Date of Decision : 26-04-1956

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 1(3)
Constitution of India, 1950 — Article 213, 213(2), 245, 372, 372(1)
Government of India Act, 1935 — Section 92(1)

Citation : AIR 1956 Patna 496

Hon'ble Judges : Misra, J;Ahmad, J

Bench : Division Bench

Advocate : S.C. Ghosh, for the Appellant; B.C. De, S.K. Sarkar, Narottam Chatterji, B.C. Ghosh, Tarkeshwar Prasad and Madan Kishore, for the Respondent

Final Decision : Dismissed

Judgement

Ahmad, J.—All these three miscellaneous appeals are by the judgment-debtors and arise out of orders passed in three execution cases between different parties oil objections taken by them u/s 47, Civil P. C. They have all been heard together as, amongst others, there is one common point too which arises for decision in each of them.

The execution proceedings giving rise to these appeals related to the orders of the Controller passed under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (Bihar Act 3 of 1947) (hereafter to be referred to as the Buildings Control Act) in respect of buildings situate in the partially excluded areas of Purulia and Dhanbad in the division of Chota Nagpur in the State of Bihar and were accordingly levied under the terms of Section 17 of that Act in Courts in that area competent to entertain suits for the recovery of arrears of rent in respect of those buildings.

2. Miscellaneous Appeal No. 305 of 1951 is directed against the order dated 28-8-1951, passed in Miscellaneous Appeal No. 45/6 of 1950-51 affirming the

order passed on 2-9-1950, in Miscellaneous Case No. 81 of 1950 which arose out of execution case No. 222 of 1949 relating to the order of eviction given on 29-12-1948, in regard to a house in Purulia in the district of Manbhum.

3. Miscellaneous Appeal No. 162 of 1953 is directed against the order dated 25-5-1953, passed in Misc. Appeal No. 8/6 of 1953 affirming the order passed on 27-1-1953, in Execution Case No. 42 of 1852 arising out of an order of eviction given on 8-1-1952, under the same Buildings Control Act relating to a building in Dhanbad.

4. The last appeal, Misc." Appeal No. 416 of 1954, is directed against the order dated 19-11-1954, passed in Misc. Appeal No. 23 of 1954 affirming the order dated 7-8-1954, given in Misc. Case No, 104 of 1954 which arose out of Execution Case No. 352 of 1953 in relation to the order of eviction given under the same Buildings Control Act on 15-12-1952, in regard to a building which also lies in Dhanbad.

5. The Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (Bihar Act 3 of 1947) received the assent of the Governor-General on 14-3-1947 and the assent was first published in the Bihar Gazette, Extraordinary, of 15-3-1947. It was preceded by a similar legislation known as The Bihar Buildings (Lease, Rent and Eviction) Control Ordinance, 1946. This ordinance was repealed by Section 25 (1) of the Buildings Control Act (Bihar Act 3 of 1947) with a saving clause in Sub-section (2) of that section providing that-

"Any rule, order or direction made or given or deemed to be made or given under the said Ordinance and in force immediately before the commencement of the Act shall continue in force and be deemed to be an order or direction made or given under this Act; and anything done and any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been made, done or taken in exercise of powers conferred by or under this Act as if this Act had commenced on the 1st day of October, 1946."

Section 1, Buildings Control Act originally stood as follows:

"1(1) This Act may be called the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947.

(2) It applies to the local areas specified in the Schedule and such other areas as may be notified by the Provincial Government in the Official Gazette or by an authority empowered in this behalf by the Provincial Government.

(3) It shall remain in force for such period as the Provincial Government may, by notification, fix:

Provided that the Provincial Government may, from time to time, by notification, extend such period;

Provided further that the expiration of this Act under the operation of this sub-section shall not-

(a) render recoverable any sum which during the continuance thereof was irrecoverable or affect the right of a tenant to recover any sum which during the continuance of this Act was recoverable by him thereunder;

(b) affect any liability incurred under this Act or any punishment incurred in respect of any contravention of this Act or any order made thereunder;

(c) affect any investigation or legal proceeding in respect of any such liability or punishment as aforesaid;

and any such investigation or legal proceeding may be instituted, continued or enforced and any such punishment may be imposed, as if this Act had not expired."

And the schedule attached to the Buildings Control Act, referred to in Sub-section (2) of Section 1, among other areas includes also the partially excluded areas of Purulia and Dhanbad. It appears that the Government of Bihar in compliance with the provisions laid down in Sub-section (3) of Section 1 of the Buildings Control Act by a Notification dated 15-3-19-17, bearing No. 6208-P.C. originally fixed one year as the period for which the Act was to remain in force. The life of the Act, therefore, under that notification had to expire on 14-3-1948.

Accordingly the Government of Bihar by another notification dated 1-3-1948 extended its operation for the next one year. That period was to expire on 14-3-1949. The Government of Bihar, therefore, again issued another notification dated 7-3-1949, whereby the life of Bihar Act 3 of 1947 was further extended for another one year.

It is said that after this last extension the Government following the decision given in -- AIR 1949 175 (Federal Court) passed Ordinance No. 6 of 1949 and thus by legislation fixed the life of the Act for five years beginning from 15-3-1947 -- that means, including the periods covered by Notifications issued on 15-3-1947; 1-3-1948 and 7-3-1949. And on 8-1-1950, that Ordinance No, 6 of 1949 was got validated by Bihar Act 7 of 1950 with the result that thereafter Bihar Act 3 of 1947 was to remain in force for five years beginning from 15-3-1947 under the provisions of that Act.

This Act, it is stated, was the subject-matter of certain challenge in the case of -- Kishori Lal Potdar Vs. Debi Prasad Kejriwal and Another, and therein some of its provisions were declared ultra vires with which we are not at present concerned in this case. This Bihar Act 7 of 1950, as it is evident from the provisions made therein, was to expire on 14-3-1952. The Government, therefore, again on 23-1-1952, extended the life of that Act by another legislation, namely, Bihar Act 37 of 1951 for a fresh period of two years "from 15-3-1952.

Unfortunately in the case of -- Mangtulal and Another Vs. Radha Shyam and Another, this Act was declared ultra vires by this Court. Therefore, in order to meet the contingency created by that decision, the Government of Bihar on 25-9-1952, passed Ordinance No. 5 of 1952 and thereby validated the provision

of its extension covered by Bihar Act 37 of 1951 for two years from 15-3-1952 to 14-3-1954. Subsequently Bihar Act 5 of 1953 was passed on 9-3-1953 validating Ordinance No. 5 of 1952.

Lastly on 11-3-1954 came the Bihar Act 4 of 1954 whereby the life of Bihar Act 3 of 1947 was again extended for a period of another four years up to 31-3-1958. These notifications, Ordinances and Acts, as is evident from their contents related exclusively to the term of life of Act 3 of 1947 and would have normally operated in the entire areas given in the schedule of that Act had there been no other bar in law in regard to the operation of that Act in the excluded and partially excluded areas of Bihar like Purulia and Dhanbad.

It is, however, admitted that Section 92 of the then Government of India Act, 1935 provided certain restrictions on the application of Central and Provincial Acts to such areas and that under the provision of that section such Acts could not apply in those areas proprio vigore excepting on the issue and publication of a notification contemplated under it. Sub-section (1) of that section said:

"The executive authority of a Province extends to excluded and partially excluded areas therein, but, notwithstanding anything in this Act, no Act of the Federal Legislature or of the Provincial Legislature, shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit."

The Governor of Bihar, therefore, in the very beginning on 15-3-1947, along with the aforesaid notification No. 6208-P.C. by which the life of Bihar Act 3 of 1947 was for the first time fixed for one year, "issued also a separate notification u/s 92(1), Government of India Act, That was No. 6207-P.C. dated 15-3-1947 and read as follows:

"In exercise of the power conferred by Sub-section (1) of Section 92, Government of India Act, 1935, the Governor of Bihar is pleased to direct that the Bihar Buildings (Lease, Kent and Eviction) Control Act, 1937 (Bihar Act 3 of 1947), shall apply to the Chota Nagpur Division and to the Santal Parganas District."

6. Mr. S.C. Ghosh appearing for the appellants in all these appeals has conceded that this notification u/s 92(1), Government of India Act, 1935 issued on 15-3-1947, was sufficiently effective to keep Bihar Act 3 of 1947 in operation in the areas of Chota Nagpur and Santal Parganas all along till Act 3 of 1947 is found to have been since then continuously in operation in the rest of the State of Bihar and that it was not necessary for the Governor to issue fresh notification u/s 92(1), Government of India Act, 1935 each time when the life of Bihar Act 3 of 1947 was extended as stated above by different notifications.

This stands supported also by the law laid down in -- Joylal Agarwala Vs. The

State, . That case referred to a notification u/s 92(1), Government of India Act, 1935, issued on 14-12-1946 extending the operation of the Essential Supplies (Temporary Powers) Act to the district of Darjeeling which was then in the province of Bengal an excluded area. Normally the Essential Supplies Act was to remain operative only till 31-3-1947. Thereafter in the first instance the Governor-General by a notification issued on 3-3-1947 extended its life till 31-3-1948 and thereafter on 25-2-1948 the Constituent Assembly by its first resolution further extended its life by one year up to 31-3-1949.

On 23-9-1949, a second resolution was passed by the Assembly extending the life of the Act again by another one year up to 31-3-1950. On those facts question arose as to whether the Essential Supplies Act could be said to have been validly in operation in the district of Darjeeling even after 31-3-1947, since when no other notification u/s 92(1), Government of India Act relating thereto was ever again issued. In answer to that question the learned Judges of the Supreme Court observed:

""The notification of 14-12-1946, issued by the Governor applied the Essential Supplies Act to the Darjeeling district, and its life was extended up to 31-3-1948 by the notification of the Governor General. It is difficult to see why a fresh notification u/s 92(1), Government of India Act is required to continue the life of the Act in the district of Darjeeling. The Governor's notification extended the Act to Darjeeling without specifying any particular period for its applicability to that district, and it follows therefore that the Act would remain in force in the district so long as it remained in force in the rest of India. It is only if its effect had ceased earlier than the coming into force of the Indian Independence Act and there was a re-enactment by the legislature which was sought to be applied to on excluded area, that a notification by the Governor u/s 92(1), Government of India Act might be necessary. Otherwise, the question of a fresh notification does not arise."

It is, therefore, clear that in the present case also, the notification u/s 92(1), Government of India Act, issued on 15-3-1947, is sufficient to keep Bihar Act 3 of 1947 in operation also in the areas of Chota Nagpur and Santal Parganas so long as it is found to be validly enacted and to have been continuously in operation since then in the rest of Bihar.

7. It has, therefore, been argued by Mr. S.C. Ghosh that Act 3 of 1947 was ab initio an invalid piece of legislation and as such void, and, therefore, the notification issued on 15-3-1947 u/s 92(1), Government of India Act, 1935 had nothing to operate upon. In other words, Act 3 of 1947 being ab initio void, there was nothing in law which could be extended by the notification u/s 92(1), Government of India Act, 1935 to the areas of Chota Nagpur and Santal Parganas.

The ground of attack as to the invalidity of Act 3 of 1947 is based on the contention that the power given to the Provincial Government u/s 1(3) of the

Buildings Control Act was a case of delegated legislation and, therefore, not only that particular provision was void but that it invalidated the entire Act 3 of 1947.

In support of this contention reliance has been placed on behalf of the appellants on the decision in AIR 1949 175 (Federal Court) as also on the decision in -- Krishna Chandra Misra Vs. Sushila Mitra, which is based on the principle laid down in the former decision. The statute involved in the decision of the Federal Court was the Bihar Maintenance of Public Order Act, 1947. Section 1(3) of that Act provided that it shall remain in force for a period of one year from the date of its commencement but it had a proviso attached to it which was in the following terms:

""Provided that the Provincial Government may, by notification on a resolution passed by the Bihar Legislative Assembly and agreed to by the Bihar Legislative Council, direct that this Act shall remain in force for a further period of one year with such modifications, if any, as may be specified in the notification."

It is obvious from the section quoted above that the Bihar Maintenance of Public Order Act, 1947 was a temporary Act and the Legislature in definite terms had limited its life to a period of one year from the date of its commencement, Therefore, the continuity of its life thereafter depended solely on the decision of the Provincial Government and that also with the power of such modifications as the Provincial Government could have thought desirable. On those facts the majority Judges in that case came to the conclusion that the detentions were illegal.

In "arriving at that decision, the learned Judges were essentially influenced by two factors, (1) that the Act was a temporary one; in other words, ft was intended to be in operation only for a limited period, and (2) that the delegation made under the proviso to Section 1(3) of that Act gave power to the Provincial Government not only to extend its life beyond the period fixed in the section but also to make such modifications in that at the time of its extension as they thought necessary and proper. The case in the Buildings Control Act is entirely different. Here, as it is obvious from the language of Section 1, the statute is a perpetual Act and is to continue in force unless it is repealed.

All that has been left for the decision of the Provincial Government u/s 1 is to extend its operation to the areas which they think proper or to cut away its life to a period fixed and thereafter to extend it again if they so like. And it is to be noted that there is no power given to the Provincial Government in the case of this Act to cut away its life on making any modification in the provisions of the Act as originally enacted by the Legislature. Therefore, in my opinion, on these grounds alone the law laid down in AIR 1949 175 (Federal Court) cannot be said to be applicable to the facts of these cases.

For the same reasons the decision reported in Krishna Chandra Misra Vs. Sushila Mitra, , which is baaed on the principle kid down in AIR 1949 175 (Federal Court) , is also not of much value in deciding the cases before us. Moreover, the

point raised by Mr. S.C. Ghosh in regard to the invalidity of Act 3 of 1947 on the grounds stated above stands fully answered by a Full Bench decision of this Court in Kishori Lal Potdar Vs. Debi Prasad Kejriwal and Another, . In that case the learned Judges have elaborately discussed the question of delegated legislation in contradistinction to a conditional legislation and have in the course of their judgment fully discussed the law on the subject in regard thereto as laid down in -- "Queen v. Burah" 5 Incl App 178 (PC) (F); -- "Russell v. Queen" (1882) 7 AC 829 (G); -- "Powell v. Appollo Candle Co. Ltd.", (1885) 10 AC 282 (H), -- "Hodge v. The Queen" (1883) 9 AC 117 (1) and others.

Therefore, in view of what has been decided in the Full Bench decision of Kishori Lal Potdar Vs. Debi Prasad Kejriwal and Another, , as also in view of the reasons given above, it has to be held that the power given to the Provincial Government u/s 1 (3), Buildings Control Act, 1947, is not a case of delegated legislation but that of a conditional legislation and as such that provision of law or the Act itself is neither void nor constitutionally bad. For these reasons, I think that the contention of Mr. S.C. Ghosh is without substance and it has to be rejected.

Further the decisions in -- "Kedarnath Gupta v. Nagiudra Narayan Sinha" AIR 1954 Pat 97 (J) and -- "Bhagwan Das v. Sm. Dulari Jaiswal" AIR 1955 Pat 142 (K), clearly establish that Act 3 of 1947 was not only not void when enacted but continued to operate all along uninterruptedly as a result of the different notifications or ordinances referred to above.

In that view of the matter, it is, therefore, established that Act 3 of 1947 came into operation in the areas of Chota Nagpur and Santal Parganas on the issue of the notification u/s 92(1), Government of India Act 1935 on 15-3-1947 and that as Act 3 of 1947 has been since then all along in force in other parts of Bihar, it has been equally in force in Chota Nagpur and Santal Parganas also. Thus, the point in common in all these appeals, which alone has been with great stress argued in these cases, stands decided against the appellants.

8. In Misc. Appeals Nos. 305 of 1951 and 162 of 1953 the only point raised on behalf of the appellants was as to the invalidity of Act 3 of 1947. That point having been decided against the appellants, there is now left no other controversy to be adjudicated in these appeals.

9. So far as Misc. Appeal No. 416 of 1954 is concerned, in that, apart from the common point, one additional consideration has also been raised. That relates to the invalidity of Ordinance 6 of 1949. It may be re-stated here that Appeal No. 416 of 1954 relates to the order of eviction which was passed on 15-12-1952, and during that period the life of Act 3 of 1947 had been extended by Ordinance No. 6 of 1949. That ordinance was issued on 11-10-1949, and it had extended the life of Act 3 of 1947 for a period of five years from 15-3-1947.

The contention of Mr. Ghosh as to the invalidity of this ordinance is based on the footing that though the ordinance was passed on 10-5-1952, when the Legislature was not in session but it was to take effect retrospectively from

15-3-1952. That, according to him, was not permissible under the Government of India Act, 1935 as the Legislature was admittedly in session during that year up to 30-4-1952 though thereafter it was dissolved up to 10-5-1952.

In that view of the matter, it has been contended by Mr. Ghosh that the ordinance could not operate retrospectively at least for the period between 14-3-1952 and 30-4-1952 during which period the Legislature was in session. In my opinion, there is no substance in this contention. In the first place, the language of Article 213 whereunder the ordinance had been issued does not bear this implication. Clause (2) of Article 213 says :

"An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor."

In other words, the ordinance under this clause has got all the force which an Act may have and it is not open to dispute that a Legislature can pass an Act with retrospective effect. Secondly, the question of invalidity of the ordinance is only of an academic value for the ordinance soon on its promulgation was validated on 9-3-1953 by Bihar Act 5 of 1953 as stipulated in Clause 2 (a) of Article 213 of the Constitution and that Act incorporated all the provisions which had been enacted under Ordinance 5 of 1952.

Therefore, during that period Act 3 of 1947 was in any case kept alive in the rest of Bihar if not by Ordinance 5 of 1952 at least by Bihar Act 5 of 1953. and, therefore, for the reasons already stated, it was not less in force during the period when the eviction order on 15-12-1952, was passed even in the areas of Chota Nagpur and Santal Parganas. Thirdly, Mr. S.C. Ghosh has not contended that if Act 3 of 1947 was ab initio a valid legislation, it was not in force in the remaining areas of the State of Bihar on 26-1-1950, when the Constitution came into force. Article 372(1) of the Constitution says:

""Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

And Explanation I attached to that Article reads:

"The expression "law in force" in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed notwithstanding that it or parts of it may not be then in operation either at all or in particular areas."

In view of these provisions in that Article, there-fore, it has to be held that Act 3 of 1947, as it was in force in some parts of Bihar on 26-1-1950, automatically came into operation in the whole of the area covered by it unless, as laid down in Clause (5) of Schedule 5 to the Constitution, it is contended for which there can

be no basis on the facts of this case that its operation to that area was restricted by some notification issued thereunder. For that reason also it has to be held that Act 3 of 1947 was in operation on 15-12-1952, even in the areas of Chota Nagpur and Santal Parganas when the final order for eviction relating to Appeal No. 416 of 1954 was passed. That being so, this point also fails.

10. In the result, therefore, I find that there is no substance in either of the appeals and all of them have to be dismissed with costs.

Misra, J.

11. I agree.