
(1957) 01 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Cr. Appeal No. 105 of 1956

Kannilal

APPELLANT

Vs

Udhamal

RESPONDENT

Date of Decision : 16-01-1957

Acts Referred:

Bhopal State Rent Control Ordinance, 1949 — Section 5

Citation : (1957) JLJ 742

Hon'ble Judges : Nevaskar, J

Bench : Single Bench

Advocate : G.J. Tanwani, for the Appellant; M.C. Nihalani, for the Respondent

Judgement

Nevaskar, J.—An application was made by the appellant landlord for obtaining the approval of the Controller for the ejectment of the respondent u/s 5 of Ordinance No. 14 of 1949 known as Bhopal State Rent Control Ordinance, 1949.

2. The application inter alia alleged that the premises in the occupation of the tenant were required by him for the occupation of the persons of his family for whom he is bound to provide accommodation. This was resisted by the tenant who denied the allegation which entitled the landlord to obtain the requisite approval of the authority for his ejectment. The approval sought for was initially granted but on appeal to the High Court the order was set aside and the case was remanded "for a fresh hearing In accordance with law."

3. After the remand either party did not adduce any evidence and the learned Magistrate held that in view of the order of remand and in the absence of any fresh evidence the application was unsustainable. He therefore dismissed the same by his order dated 13-5-1956.

4. Against this order the landlord preferred appeal in the court of Judicial Commissioner Bhopal on 30-8-1956 and after the reorganization of States the case was transferred to this High Court for disposal.

5. Immediately before the formation of the new State of Madhya Pradesh another Act known as the Bhopal State Regulation of Letting of Accommodation Act, 1956 was passed. It repealed the aforesaid Ordinance No. 14 of 1956 by Section 11 which is as follows:--

(1) The Bhopal State Rent Control Ordinance, 1949 (No. XIV of 1949) and the Bhopal State Rent Control (Amendment) Ordinance 1949 (No. 19 of 1949) are hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken (including any appointments, orders, notifications or rules made or Issued) in exercise of the power conferred by or under either of the said Ordinances shall be deemed to have been done or taken by or under this Act as if this Act were in force on the date on which such thing was done or action was taken.

(3) The repeal of the Bhopal State Rent Control Ordinance, 1949 (No. XIV of 1949) shall not revive any notification repealed by that Ordinance.

6. A preliminary objection is taken by Mr. Nihalani for the respondent that this appeal has become infructuous by reason of the repeal of Ordinance No. 14 of 1949 by Act XIV of 1936. He relied upon the decision in AIR 1933 361 (Nagpur) (Full Bench) Chhote Khan vs. Mohammad Obedulla Khan, in support of his contention.

7. Mr. Tanwani on the other band contended that the appeal had been preferred before the repeal of the Ordinance by the Act No. 14 of 1936. This right of appeal is a vested right and that, in the absence of specific provision to that effect, it could not be held to have been taken away merely by the fact of repeal.

8. Before discussing this question it will be necessary to examine the nature of the right and the provision with regard the repeal of the Ordinance No. 14 of 1949 by Act No. 14 of 1956.

9. On 15th of April 1949 the Ruler of Bhopal issued this Ordinance No. 14 of 1949 known as Bhopal State Rent Control Ordinance, 1949. The object of the Ordinance as stated in the preamble was to consolidate the law regarding regulating of rents and eviction from residential buildings and shops in the Bhopal State. It applied in the first instance to the cities of Bhopal and Sihore and authorised the Government to extend the same to other places.

10. Section 3 of the Ordinance laid down the specific circumstances under which a landlord could require a tenant to vacate a residential building by any notice, threat, legal process or any other means and provided for the approval of the Controller before a tenant could be required to vacate.

11. Section 6 laid down circumstances under which a landlord could require the tenant to vacate a shop by any notice, threat, legal process or any other manner and likewise provided for the approval of the controller before the tenant could be required to vacate.

12. Thus it is clear from these provisions that the Ordinance created a sort of restriction or clog on the power of landlord to have recourse to ordinary legal process for the eviction of a tenant.

13. Section 3 of the new Act provided as follows:--

The State Government may, by general or special order, which shall extend to such areas as the State Government may direct, provide for regulating the letting and sub-letting of any accommodation or class of accommodation whether residential or non-residential, whether furnished or unfurnished and whether with or without board, and in particular,--

(a) for controlling the rents for such accommodation either generally or when let to specified persons or classes of persons or in specified circumstances;

(b) for preventing the eviction of tenants or sub-tenants from such accommodation in specified circumstances;

(c) for requiring such accommodation to be let either generally, or to specified persons or classes of persons, or in specified circumstances; and

(d) for collection of any of information or statistics with a view to regulating any of the aforesaid matters,

14. It may be mentioned here that no general or special order of the sort contemplated under this section has so far been made.

15. Section 11 of the Act provided for repeal.

16. The Act came Into force at once and hence the repealing provision had its effect upon the Ordinances referred to in section 11 which were as it were completely obliterated from the statute book except as regards past transactions which were complete thereunder.

17. The effect of such a repeal was that the clog created in the way of landlord to have recourse to legal process for securing eviction of a tenant was removed and after the date on which the Act came into force a landlord can sue for ejectment in as much as no new clog was created under the repealing statute by any general or special order of the State Government as contemplated under the Act apart from the question of legality of such a delegation. The obligation placed upon landlord to secure the approval of the Controller under the Ordinance was one dependent upon the Ordinance and did not exist apart from it and ceased to exist on the repeal of the Ordinance which created it. The corresponding right of the tenant not to be disturbed in his occupation except on obtaining the Controller's approval too was gone. The parties were relegated to their rights and obligations under the ordinary law as new ones are created.

18. In second appeal No, 312 of 1948 Manghamal Vs. Messrs Amrit Pharmacy Division Bench of Nagpur High Court held that:--

As in the case of amendments, there is one important distinction which must be

kept in mind, and that is the difference between rights dependent upon statute and those which are not generally, an action dependent upon a statute falls with its repeal, even after the action thereon has been instituted, in the absence of a saving clause. In other words, rights-dependent upon a statute and still inchoate, that is, not perfected by a final judgment, are lost by a repeal of the statute.

This was affirmed in Miscellaneous Petition No. 131 of 1952 *Hukumchand Vs. Motilal*.

19. These observations fully apply to the present case as the obligation of the landlord and the corresponding right of the tenant depended upon the Ordinance.

20. It is held in AIR 1941 5 (Federal Court) *Lachmeshwar Prasad Shukul and others Vs. Keshwar Lal Chaudhur and others*, that a court of appeal is bound to give effect to any change in the law which has come into existence after the judgment under appeal was given. It therefore follows as was observed by Sinha C.J. [AIR 1953 Nag 361 (374)] that this court is bound to take notice of the changed legal position as a result of the (new) Act and see to what extent the rights in controversy between the parties are affected by that change.

21. In the present case Section 5 of the Ordinance required the landlord to secure the approval of the Controller before he could sue in ejectment. This section was repealed along with the rest of the Ordinance on coming into force of the New Act No. 14 of 1956 referred to above. There is therefore no longer any necessity of obtaining such an approval. The proceeding in appeal for securing such an approval is therefore unnecessary after the commencement of the Act as neither the Act nor any general or special order under it created any such requirement.

22. Even if I were to allow the appeal and send back the case, the landlord whose attempt was to get the clog in his way removed, will not prosecute this proceeding as he can independently of it file a suit for the ejectment of the respondent.

23. No doubt a right of appeal, is a vested right and in the absence of specific provision depriving the litigant of such a right it cannot be said to have been lost merely by the fact of repeal. But it is equally clear, as was held in AIR 1953 361 (Nagpur) , that where the right to be litigated in the appeal has, by reason of subsequent change in Law, become infructuous, the court is bound to take notice of this fact and mould the relief accordingly. In that case it was held by the majority of Judges that by virtue of Section 50 of Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated lands) Act 1 of 1951, the representative character of the Lambardar had ceased by the passing of the Act. His right to the remedy afforded by the C.P. Land Revenue Act also like wise ceased, as a consequence. His right to special remedy continued as long as he held that character. The question arose in appeal as to whether the action commenced under the C.P. Land Revenue Act by the landlord Lambardar could be determined on the basis of that law or the court ought to take notice of the

subsequent law.

24. The result therefore is that due to subsequent change in Law, entire proceedings have become infructuous including one in appeal.

25. Under the circumstances of this case there will be no order as to costs.