

(1969) 10 KL CK 0020
In the High Court Of Kerala
Case No : SA No. 15 of 1965

Katheem Adamkutty and others

APPELLANT

Vs

K. Damodaran Nambudiri and others

RESPONDENT

Date of Decision : 24-10-1969

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 58, 58(3)
General Clauses Act, 1897 — Section 6, 6(b)
Kerala Land Reforms Act, 1963 — Section 132, 132(2), 132(2), 132(3), 132(3)(a)

Citation : (1970) KLJ 508

Hon'ble Judges : V.P. Gopalan Nambiyar, J; T.S. Krishnamoorthy Iyer, J

Bench : Division Bench

Advocate : V.R. Venkitakrishnan, for the Appellant; A. Achuthan Nambiar and T.P. Kelu Nambiar for Respondents 1 and 11 and M.C. Sreedharan, K. Bhaskaran, O.V. Radhakrishnan and P. Thankappan for Respondent No. 10, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Krishnamoorthy Iyer, J.—In this case the question we have to consider is whether in view of Section 132 of the Kerala Land Reforms Act, 1963 (Act 1 of 1964) the appellant can prosecute the redelivery application he filed on 17-7-1957 u/s 5(2) of the Malabar Tenancy (Amendment) Act No. XXII of 1956. The said provision reads thus: Where before the commencement of the Malabar Tenancy (Amendment) Act, 1954 (Madras Act VII of 1954), a landlord has obtained possession of a holding in execution of a decree passed by a Court on or after the 1st July 1942 under clause (5) or clause (6) of Section 14 or under clause (5) or clause (6) of Section 20 of the Malabar Tenancy Act, 1929 (Madras Act XIV of 1930), and such decree would not have been passed if the principal Act as amended by the Malabar Tenancy (Second Amendment) Act, 1945 (Madras Act XXIV of 1945), the Malabar Tenancy (Amendment) Act, 1951 (Madras Act XXXIII of 1951), and this Act had been in force at that time the tenant shall be entitled to be restored to the possession of the holding with all

the rights and subject to all the liabilities of a tenant if he makes an application in that behalf in the Court which passed the decree within twelve months of the commencement of this Act.

Provided that before such restoration is effected, the tenant shall be bound to return to the landlord, (i) the value if any, paid by the landlord to the tenant for his improvements, (ii) the kanartham, if any, and (iii) the value of improvements, if any, affected bona fide by the landlord, between the date on which he obtained possession of the holding and the date on which possession thereof is restored to the tenant.

The appellate Judge dismissed the application holding that in view of the repeal of the Malabar Tenancy Act 1929 by Section 132 (3) of Act 1 of 1964 the appellant is not entitled to prosecute the same as he is no longer entitled to the relief u/s 5 (2) of the Madras Act XXII of 1956. 2. The submission on behalf of the appellant was that his right to continue the application filed u/s 5 (2) of Madras Act XXII of 1956 is not affected on account of Act 1 of 1964 in view of Section 4 of the Interpretation and General Clauses Act, 1125. The said provision which corresponds to Section 6 of the Central Act reads thus:

Where any Act repeals any enactment hitherto made or hereafter to be made, 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 Act had not been passed.

3. The reliance by the learned counsel for the appellant was on sub-sections (c) and (e) of the above provision. In view of the decisions of the Supreme Court which we shall immediately discuss the interpretation of the above Section admits of no doubt. B. K. Mukherjea, J. in *State of Punjab v. Mohar Singh* AIR 1955 S.C. 84, in dealing with Section 6 of the Central General Clauses Act, 1897, the words of which are identical with Section 4 of the Kerala Act observed:

Whenever there is a repeal of an enactment, the consequences laid down in section 6 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 we 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. We 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.

4. The above observations are quoted with approval in *Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others*, and *Brihan Maharashtra Sugar Syndicate v. Janardan* AIR 1969 S.C. 794. It is in the light of these principles that we have to examine the facts of the case before us.

5. It will be useful at this stage to reproduce sub-sections (2) and (3) of Section 132 of the Kerala Act 1 of 1964:

132(2) The following enactments as in force in any part of the State of Kerala are hereby repealed, namely:--

(i) The Cochin Verumpattamdars Act. VIII of 1118.

(ii) The Travancore-Cochin Prevention of Eviction of Kudikidappukars Act, 1755.

(iii) The Malabar Tenancy Act, 1929.

(iv) The Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956.

132(3) Notwithstanding the repeal of the enactments mentioned in sub-section (2),--

(a) any decree passed before the commencement of this Act for the eviction of a tenant from his holding, pursuant to which eviction has not been effected, may on the application of the tenant or the landlord, be reopened and the matter may be disposed of in accordance with the provisions of this Act:

(b) any suit for restoration filed u/s 24 or Section 26 or sub-section (3) of Section 53 of the Malabar Tenancy Act, 1929 or any application for determination of fair rent made u/s 16 of that Act or any application for fixation of fair rent made u/s 9 of the Madras Cultivating Tenants (Payment of Fair Rent) Act 1956, and pending disposal at the commencement of this Act shall be disposed of in accordance with the provisions of the said Acts as if those Acts had not been repealed.

6. It is unnecessary for the purpose of our discussion to reproduce clauses (c) and (d) of sub-section (3) of Section 132.

7. The question to be decided is whether Section 132 (3) (a) and (b) manifests an intention incompatible with and contrary to the provisions of Section 4 of the Interpretation and General Clauses Act 1125. It was not disputed at the bar that the effect of Section 132 (2) of Act 1 of 1964 is to repeal the Malabar tenancy Act, 1929 and also the various enactments amending the same including the Madras Act XXII Of 1956. Section 132 (3) of Act 1 of 1964 deals specifically with the effect of the repeal of the enactments referred to in Section 132 (2) thereof, and Section 132(3) (a) provides for the reopening of any decree passed before the commencement of Act 1 of 1964 for the eviction of a tenant from his holding only in those cases where eviction has not been effected in execution of the decree and for disposing of the matter in accordance with the provisions of Act 1 of 1964. This provision implies that a tenant who has been evicted from his holding prior to Act 1 of 1964 pursuant to a decree is not entitled to any relief under the provisions of the Act. Section 132(3)(b) specifically enumerates the proceedings started under the several enactments referred to therein and pending disposal at the commencement of the Kerala Act 1 of 1964 and provides for the continuance of the same under those enactments as if they had not been repealed. In our view, the opening words of Section 132 (3) taken along with clauses (a) and (b) in effect displaces the applicability of Section 4 of the Interpretation and General Clauses Act 1125. By the enactment of Section 132 (3) (a) and (b) the new legislation manifests an intention contrary to the provisions of Section 4 of the Kerala Interpretation and General Clauses Act. A different intention such as is contemplated by the section as being sufficient to prevent the preservation of a right or privilege acquired or secured under a repealed Act may arise by necessary implication and full effect has to be given to the repeal subject to any provision in the repealing statute itself. In *Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others*, , their Lordships had to consider the effect of Section 58 (3) of the Administration of Evacuee Property Act, 1950 (Central Act 31 of 1950) on Section 6 of the Central General Clauses Act. Jagannadhadas, J., speaking for the Court said:

In the present case sub-s. (3) of S. 58 of Central Act 31 of 1950 purports to indicate the effect of that repeal, both in negative and in positive terms. The negative portion of it relating to "the previous operation" of the prior Ordinance appears to have been taken from S. 6 (b), General Clauses Act, while the positive portion adopts a "deeming" provision quite contrary to what is contemplated under that section.

Under the General Clauses Act the position, in respect of matters covered by it, would have to be determined as if the repealing Act had not been passed, while under S. 58 of Central Act 31 of 1950, the position--so far as the positive portion is concerned--has to be judged as if the "repealing Act" were in force at the earlier relevant date.

Therefore where, as in this case, the repealing section which purports to indicate the effect of the repeal on previous matters, provides for the operation of the previous law in part and in negative terms, as also for the operation of the new law in the other part and in positive terms the said provision may well be taken to be self-contained and indicative of the intention to exclude the application of S. 6, General Clauses Act.

8. If the point raised on behalf of the appellant is judged in the light of the above observations we well have to state on general terms that Section 132 (3) indicates the effect of the repeal of the enactment mentioned in sub-section (2) of Section 132. Section 132 (3) (a) in positive terms provide for the reopening of decrees passed before the commencement of the Kerala Act 1 of 1964 for the eviction of a tenant from his holding pursuant to which eviction has not been effected and it also says that after such reopening the matter will have to be disposed of in accordance with the provisions of Act 1 of 1964. Section 132 (3) (b) refers to the range of proceedings pending on the date of Act 1 of 1964 which can be continued under the enactments repealed. This obviously shows that the proceedings not referred to in Section 132 (3) (b) of Act 1 of 1964 do not survive; after the repeal. This is really a contrary intention expressed in Act 1 of 1964 to the applicability of Section 4 of the Interpretation and General Clauses Act 1125. If we agree with the sub-mission of the learned counsel for the appellant that Section 4 of the Kerala Interpretation and General Clauses Act 1125, is applicable there is no purpose in enacting Section 132 (3) (b) of the Act and it will become superfluous.

9. Incidentally it was contended for the appellant that since there is no express provision in Act 1 of 1964 for dismissal of applications u/s 5 (2) of Madras Act XXII of 1956 which were pending on the date of Act 1 of 1964, they will have to be continued and disposed of under the Madras Act. That such a contention has no merit can be seen from the dictum in Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, . The question which arose for decision in that case was whether after deletion of Section 28 of the Calcutta Thika Tenancy Act, 1949 by Calcutta Tenancy (Amendment) Act (6 of 1953) the applications filed u/s 28 of the parent Act and pending disposal when the Amendment Act came into force can be continued. Das Gupta, J. observed: It is helpful to remember in this connection the fact that while S. 28 of the original Act was giving certain tenants a right to relief which they would have had if the beneficent provisions of the new Act were available to them during the disposal of the suits the manner in which the right is given is by conferring on courts a power to rescind or vary decrees or orders to bring them into conformity with the provisions of the Act. As soon as S. 28 was omitted the courts ceased to have any such power. The effect of the proviso in its strict grammatical meaning is that the courts shall be deemed never to have had this power in respect of applications which were still pending. The inevitable result is that the Court having been deprived of the power to give relief even in respect of applications made at a time when the power could have been exercised, was bound to

dismiss the applications.

The above principle should govern the case before us. The result of our discussion is that the court has power to grant any relief u/s 5 (2) of Madras Act XXII of 1956. It therefore follows that the application filed under. Section 5 (2) of Madras Act XXII of 1956 was rightly dismissed by the courts below. We therefore dismiss the second appeal, but we make no order as to costs.