

(1957) 11 PAT CK 0016

In the Patna High Court

Case No : Misc. Judicial Case No. 926 of 1956

Lady Dorothy Lort Williams

APPELLANT

Vs

Uditandu Prakash Mullick and Others

RESPONDENT

Date of Decision : 06-11-1957

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 1955 — Section 11, 23

Citation : AIR 1958 Patna 240 : (1957) 5 BLJR 815

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : L.K. Choudhary and Amlakant Choudhary, for the Appellant; Govt. Pleader and V.P. Verma, for the Respondent

Judgement

Raj Kishore Prasad, J.—The petitioner has moved this Court, under Articles 226 and 227 of the Constitution, for an appropriate writ to quash the order, passed u/s 5 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (Bihar Act III of 1947), hereafter referred to as "the Act", of the Controller dated 22-9-1955 (Annexure D to the application), and, the subsequent orders passed on appeal by the Deputy Commissioner, Ranchi, on 3-5-1956 (Annexure E), and, on revision by the Commissioner of Chotanagpur Division on 12-11-1956 (Annexure F) upholding the order of the Controller dated 22-9-1956 (Annexure D).

2. On the above application of the petitioner, a rule was issued by this Court against the opposite party to show cause why the aforesaid orders should not be quashed.

3. Cause has been shown by Mr. Bay Paras-nath, Government Pleader, on behalf of the opposite party. The petitioner is the owner of a holding which she has let out to opposite party 1, on a monthly rental of Rs. 700/-. The opposite party 1 is running a hotel called "Grand Hotel" in this holding. The tenant, opposite party 1, made an application u/s 5 of the Act for determination of a fair rent for the building in his occupation.

4. On this application, the Controller on 5-7-1951 determined the fair rent and fixed it at Rs. 450/- as against Rs. 700/-, the existing monthly rental of the building. On appeal by the petitioner, the Deputy Commissioner, Ranchi, set aside the order of the Controller and remanded the case for further hearing according to law, by his order dated 6-1-1955 (Annexure B). A revision was carried against the above order to the Commissioner of Chotanagpur Division, who, however, dismissed it on 27-7-1955, on the ground that it was barred by time.

5. After remand, the Controller, on 22-9-1955, heard the parties and passed the following order, the validity of which is now challenged by the petitioner:

"This case has been remanded for rehearing according to the law. The B.B.C. Act of 1947 stands amended by the Act XVI of 1955 since 16-8-1953. In view of the amendment, any fair rent application pending before this Court has got to be disposed of in terms of the amended Act. According to the Amendment Act, the Municipal Assessment is the main criterion for fixation of the fair rent.

In my previous fair rent order, I had held the Municipal assessment to be low. But as the law stands now, the fair rent of the building cannot but be on the basis of the Municipal assessment of the building in question is on the record. But the building has got many furniture, and refrigerator as well. I understand the Municipal assessment does not cover the furniture etc. So evidence on the valuation of the furniture etc., is necessary. The parties are therefore directed to adduce evidence on this point on 6-10-1955.

The O.P. has filed a petition for disposal of the case according to the old Act. This petition is rejected.

6. An appeal against the above order was taken by the petitioner to the Deputy Commissioner of Ranchi, who, however, dismissed it on 3-5-1956 (Annexure E). A revision against this order was also dismissed by the Commissioner of Chotanagpur Division (Annexure P) on 12-11-1956.

7. Mr. L.K. Choudhary, in support of the rule, contended that the Controller has obviously committed an error of law in thinking that the application, for determination of fair rent, made by the tenant-opposite party, in November, 1953, should be decided not in accordance with the un-amended Act of 1947, but by the new amended Act of 1955, especially when the Controller himself found that the Municipal assessment was low. Mr. Choudhary, therefore, contended that the Act of 1947 should apply to the present case, and the amended Act had no application to it.

In support of his contention, he relied on Section 23 of the Bihar Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 1955 (Bihar Act XVI of 1955).

8. Section 23 of the Amendment Act of 1955 is in the following terms:

"23. Saving.-- Any application, appeal or proceedings under the said Act pending

before the Controller or any appellate authority or Commissioner on the date of the commencement of this Act and all proceedings arising therefrom shall be disposed of as if this Act had not been passed:

Provided that any application under the said Act, other than an application for the eviction of a tenant, pending before the Controller on the date of the commencement of this Act, and all appeals and proceedings arising therefrom shall be disposed of under the said Act as amended by this Act."

9. The principal, and the crucial question for our determination, therefore, is, whether the application of the tenant for determination of fair rent, which is pending before the Controller after remand, should be disposed of under the unamended Act, or under the amended Act? The answer to this question depends on the true meaning and proper construction of Section 23 of the Act of 1955, just reproduced in extenso above.

10. The construction put forward by Mr. Choudhary on the above Section 23 is that the opening words

"Any application, under the said Act pending before the Controller on the date of the commencement of this Act.... shall be disposed of as if this Act had not been passed"

clearly indicate that all applications made under the Act of 1947, if pending before the Controller on the date of the commencement of the amending Act of 1955, must be disposed of under the old Act, and not under the new Act. On this view of his interpretation of Section 23, Mr. Choudhary contended that, therefore, the Controller has obviously taken a wrong view of the meaning of Section 23, and, accordingly, erroneously held that the tenant's application should be disposed of under the amended Act, and not under the old Act. He sought aid, in support of his contention, from the proviso to S. 23, which provides that

"any application under the said Act, other than an application for the eviction -of a tenant, pending before the Controller on the date of the commencement of this Actshall be disposed of under the said Act as amended by this Act".

and, submitted that the proviso clearly indicated that the new Act would apply to new applications made for determination of fair rent made after the passing of the amending Act, and not to applications made before the amending Act, otherwise, so runs his argument, the first paragraph of Section 23 which also specifically speaks of "application" would be meaningless and nugatory.

11. Mr. Choudhary contended that it was the duty of the court, whenever it is possible to do so, to construe provisions which appear to conflict, so that they harmonise. He relied on a Full Bench decision of this Court in *Deonandan v. Ramlakhan* ILR 27 Pat 52: AIR 1948 Pat 225 (A), & particularly on the following observation, of my Lord, the Chief Justice; Ramaswami, J.. as he then was:-

"In support of this construction, I would refer to well-known rule applicable to all statutes, namely, the rule of construction *ex-visceribus actus*, i. e., within the four corners of the Act. "The office of a good expositor of an Act of parliament" said Coke in the *Lincoln College case*, (1595) 3 Co Ref. 59 (B), "is to make construction on all the parts together and not of one part only by itself. More recently Blackburn J., restated the rule in *Rein v. Lane* (1867) 2 QB 144 (C).

"It is, I apprehend, in accordance with the general rule of construction in every case, that you are not only to look at the words, but you are to look at the context, the collocation, and the object of such words relating to such a matter and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the use of the words under such circumstance".

Again in *Colquhoun v. Brooks* (1889) 14 AC 493 (D), Lord Herschell observed "It is beyond dispute, too, that we are entitled, and indeed bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throw light upon the intention of the legislature, and which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act."

12. He also relied on a decision of the Supreme Court in *Raj Krushna Bose Vs. Binod Kanungo and Others*, .

13. In my judgment, it is now well established by a number of decisions of the Supreme Court that the settled rule of construction is that it is the duty of the court, whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise. If two constructions are possible, the Court must adopt that which will implement and ensure smooth and harmonious working of the Constitution and discard that which will stultify the apparent Intention of the Constitution, and, therefore, eschew the other which leads to absurdity or gives rise to practical inconvenience or makes well established provisions of existing law nugatory.

The Court has to make construction on all the parts together, and, not of one part only by itself. The general rule of construction, in every case, therefore, is that the Court is not only to look at the words, but it has to look at the context, the collocation and the object of such words relating to such a matter, and interpret the meaning according to what would appear to be the meaning intended to be conveyed by the use of the words under such circumstances.

It is beyond dispute, too, that the Court is bound when considering the terms of any provision found in a statute, to consider any other parts of the Act which throw light upon the intention of the Legislature, and, which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso: See also *Tirath Singh Vs. Bachittar Singh and Others*, ; and *Abdul Jabar Butt Vs. State of Jammu and Kashmir*, .

14. There is, accordingly, no doubt that the rule of harmonious construction must be adopted in the present case, and therefore, the proviso to Section 23 has to be construed harmoniously with the provisions of the earlier part of Section 23 of the Act Of 1955.

15. Applying the above well-known canons of interpretation, therefore, we find that there is no inconsistency between the two parts of Section 23. In the first part of Section 23, the word "application" obviously means "an application for eviction" of a tenant made under the old Act, which has to be disposed of under the old Act, and not under the new Act, because under the Amendment Act of 1955, such an application for eviction u/s 11 of the Act of 1955 has to be made to the Civil Court and not to the Controller as used to be done under the old Act.

Section 11 of the amended Act provides that where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the "Court" on one or more of the grounds mentioned in Clauses (a) to (e) of Section 11 of the new Act. The word "Court" has been defined in Section 2 (bb) of the new Act of 1955; according to which definition, the word "Court" means the Court having jurisdiction under the Code of Civil Procedure, 1908 (V of 1908), to entertain a suit by a landlord against a tenant for recovery of possession of a building in respect of which a suit or application is filed under this Act.

The proviso, therefore, provides that any application under the old Act, other than an application for eviction of a tenant, pending before the Controller on the date of the commencement of the new Act, shall be disposed of under the amended Act, that is, the Act of 1955, and not under the old unamended Act of 1947. The contention of Mr. Choudhary, that the proviso contemplates new applications, and not old applications made under the old Act, cannot, therefore, be sustained on the true meaning and construction of Section 23 of the Act of 1955.

16. The true meaning and proper construction of the proviso to Section 23, therefore is that except an application for the eviction of a tenant, all other applications made under the old Act of 1947, if pending before the Controller on the date of the commencement of the new Act of 1955, as also all appeals and proceedings arising therefrom, shall be disposed of under the new Act of 1955, and not under the old Act of 1947.

17. If this construction is put on Section 23, the apparent conflict is resolved, and, harmonious working of the two provisions in Section 23 is ensured. In my judgment, therefore the courts below have taken a correct view of the law in holding that the application for determination of fair rent made by the tenant under the old Act, but now sent back on remand for disposal according to law, must be disposed of in accordance with the new Act of 1955, i. e., the Act of 1947 as amended by the Act of 1955.

18. Mr. Choudhary, in support of his construction of Section 23 of the Act of

1955, strongly relied on a Bench decision of the Madras High Court in S.E. Mohamad Abdulla Sons Vs. T.K. Dorai Arasu and Another, , but, in my opinion, that case is of no help to him.

19. In that case, the plaintiff applied for fixation of fair rent in 1950, and on that application the fair rent was fixed at Rs. 30/-, a month, that is, by reducing the agreed rate of rent by Rs. 5/- a month. On the date of the fixation of the fair rent, namely, on 16-1-1951, the Act that was in force was Madras Act 25 of 1949, which provided by Section 6 that when the Controller had determined the fair rent of a building, any sum paid in excess of the fair rent, whether before or after 1-10-1946, in respect of the use of the building after that date, shall be refunded to the person by whom it was paid, or, at the option of such person, otherwise adjusted.

The plaintiff then preferred an appeal against the order of the Rent Controller praying for further reduction of the rent as fixed by the Rent Controller, but this appeal was not eventually pressed, and, accordingly, it was dismissed on 2-11-1951. The plaintiff, thereafter, commenced his action and claimed a sum of Rs. 480/-, being the excess rent paid by him at the rate of Rs. 5/- a month from the date of the tenancy to the date of the fixation of the fair rent, Sn all, for a period of 96 months.

Before the appeal of the plaintiff was dismissed on 2-11-1951, the amending Act -- Madras Act 8 of 1951--had been passed, and, it came into force on 1-5-1951. The Amendment Act also made a provision for refund of the rent paid in excess of the fair rent, but embodied a proviso whereby the refund of the excess amount was limited for a period of one year immediately before such determination. Relying on that proviso, the trial Judge allowed refund for a period of one year only prior to 2-11-1951, the date of the dismissal of the plaintiff's appeal against the order fixing the fair rent.

The learned trial Judge took the view that no doubt the plaintiff's right to claim refund accrued with effect from 1-10-1946, under the earlier Act of 1949, but by reason of the amendment of 1951, the plaintiff could not claim refund for more than the said period of one year, because by virtue of Section 20 of the Amendment Act 8 of 1951, any application made, appeal preferred, or other proceeding instituted under the said Act of 1949 and pending at the commencement of the Amending Act shall be disposed of as if the Amendment Act had been in force at the time when such application, appeal or proceeding was made, preferred or instituted.

The learned Judge thought that the decision as regards the fixation of the fair rent became final only on the dismissal of the appeal on 2-11-1951. This view of the trial Judge was reversed by the Madras High Court. Mr. Justice Rama-swami Gounder, who delivered the unanimous judgment of the Bench, observed:

"We have no doubt that the learned Judge was erroneous in that view, if it is remembered that the appeal was one preferred by the plaintiff and not by the

defendants and which related to a further reduction of the rent as the plaintiff was not satisfied with the reduction of Rs. 5 ordered by the Rent Controller.

In other words, the appeal had no relation to the reduction of Rs. 5 already made by the Rent Controller and that was not the subject-matter of the appeal, so that, so far as the reduction of Rs. 5 ordered by the Rent Controller was concerned, his order dated 15-1-1951 was final. The learned counsel for the respondents contended that when once the appeal was preferred, the entire matter was at large and that it became as well the duty of the appellate court to fix the fair rent.

But Section 12 (3) of the Act which defines the powers of the appellate court only states that the appellate authority shall send for the record of the case from the Controller, and after giving the parties an opportunity of being heard, and, if necessary, after making such further enquiry as he thinks fit either personally or through the Controller, shall decide the appeal, that is to say, the appellate authority has only to decide the subject-matter of the controversy covered by the appeal and not fix the fair rent even to prejudice the tenant, when no appeal has been preferred by the landlord.

We therefore hold that the plaintiff was entitled to a refund of the excess rent paid by him for the period commencing from 1-10-1946, and that right which had accrued to him before the Amendment Act of 1951 came into force cannot be taken away, as we were not shown any provision in the said Act expressly or by implication taking away such a right. In fact, Section 6 (1) b) only provides for refund of excess paid "in consideration of the grant, continuance or renewal of the tenancy of the building after such commencement" (of the Amendment Act)".

20. It is, therefore, clear from the above observation of their Lordships of the Madras High Court that they held that the plaintiff was entitled to refund of the excess rent paid by him, because that right accrued to him before the Amendment Act of 1951 came into force. The reduction of the rent became final on 16-1-1951, before the Amendment Act of 1951 came into force, and, therefore, the mere fact that the plaintiff's appeal was dismissed on 2-11-1951, after the Amendment Act of 1951 had come into force on 1-5-1951 was not enough to take away the right of the plaintiff to claim reduction for more than one year under the old Act.

21. It will be noticed that in Section 20 of the Madras Act of 1951. there was no provision, like the proviso to Section 23 of the Bihar Act of 1955. In Section 20 of the Madras Act, no distinction was made between the several kinds of applications made under the Act. All applications under the earlier Madras Act of 1949, by virtue of Section 20 of the Madras Amendment Act of 1951, if instituted under the earlier Act of 1949 and pending at the commencement of the Amendment Act of 1951, were to be disposed of under the earlier Act of 1949, as if the Amendment Act had not been in force at the time when such application

had been made.

In the Bihar Act, 1955, it is clearly provided that an application for eviction of a tenant under the old Act had to be disposed of under the old Act, whereas all other applications, except an application for eviction of the tenant, were to be disposed of under the new Act. Such a provision is completely absent from the Madras Act of 1951. In my opinion, therefore, for the reasons given above, the Madras decision is of no assistance to the petitioner.

22. For the reasons given above, I hold that the petitioner has not made out any case for issue of any writ against the opposite party quashing the impugned order of the Controller dated 22-9-1955 (Annexure D), or, even the subsequent orders passed on appeal by the Deputy Commissioner on 3-5-1956 (Annexure E), or, on revision by the Commissioner of Chotanagpur Division on 12-11-1956, (Annexure F), upholding the order of the Controller (Annexure D).

23. The Controller will now proceed to dispose of the application of the tenant, opposite party, u/s 5 of the Act for fixation of fair rent after remand in accordance with law as directed in the remand order by the Deputy Commissioner in his order dated 6-1-1955 (Annexure B).

24. In the result, the rule is discharged, and, the application is dismissed with costs; hearing fee Rs. 100/- to be paid by the petitioner to the tenant, opposite party 1.

Ramaswami, C.J.

25. I agree.