

(1995) 06 AP CK 0032

In the Andhra Pradesh High Court

Case No : Second Appeal No. 15 of 1995

Maram Venkata Subbarao

APPELLANT

Vs

Nagasuri Koteswara Rao and Others

RESPONDENT

Date of Decision : 16-06-1995

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 26, 32

Citation : (1995) 3 ALT 341 : (1995) 2 APLJ 456

Hon'ble Judges : P. Venkatarama Reddi, J

Bench : Single Bench

Advocate : M.V.S. Suresh Kumar, M.R.S. Srinivas and Srinivas Karra, for the Appellant; G. Pedda Babu and V. Lakshmikumari for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

P. Venkatarama Reddi, J.—This second appeal arises out of a suit for eviction of the appellant (1st defendant) and for recovery of possession filed by respondents 1 and 2 herein and the original owner, who died.

2. The suit - O.S. No. 385/81 (on the file of the Principal District Munsif's Court, Addartki) was filed by one Sri B.V. Raghavacharyulu. During the pendency of the suit, respondents 1 and 2 jointly purchased the suit building and hence they were impleaded as plaintiffs 2 and 3. Later, during the pendency of the appeal, the 1st plaintiff Sri Raghavacharyulu died.

3. The plaintiffs sought for eviction on the ground that the defendant- appellant committed breach of the terms of the lease agreement-Ex. A-2 dated 7-4-1979 and despite expiry of the lease period of eleven months and the issuance of notice to vacate, the appellant failed to vacate the premises. It was held by the Courts below that Ex.B-3 agreement set up by the appellant according to which the lease period was three years, was not a genuine document and Ex.A-2 was valid and binding on the appellant. The Courts below also found that the suit

building was constructed during the year 1975-76 and it was not governed by the provisions of the A.P. Buildings (Lease, Rent and Eviction) Control Act. In coming to that conclusion, the trial Court relied upon the exemption granted by G.O.Ms. No. 636 dated 29-12-1983 and the judgment of a Division Bench of this Court in R.K. Gupta v. Sartaj Karan 1989 (1) ALT 551 : 1989 (1) APLJ 214. The lower Appellate Court however relied upon the judgment of this Court reported in Smt. Yadamma and another Vs. K. Mallesh, wherein it was held that the suits filed for eviction before Section 32(b) of the Rent Control Act was struck down, were maintainable in a Civil Court.

4. In the second appeal filed by the unsuccessful defendant, notice before admission was ordered on 23-1-1995 and interim stay of eviction was granted. It appears that the suit building was demolished on the same day. While admitting the second appeal on 14-3-1995, the following substantial questions of law were framed:

(1) Whether the decree of eviction passed in this case is null and void on the ground that the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960 applies in view of the judgment of the Supreme Court in AIR 1984 SC 121 striking down Section 32(b)?

(2) Whether the finding that the building was constructed in the year 1975 is supported by legally admissible evidence?

(3) Whether any and what relief could be granted to the appellant in case he succeeds in the light of subsequent event of demolition of the building?

5. Before I proceed to consider the more contentious issue viz., the 1st question, it would be proper to answer the second question. On this aspect, both the Courts have relied upon Ex. A-1 certificate issued by the Executive Officer, Gram Panchayat that the building was constructed in the year 1975-76 and it was assessed to property tax for the first time in the year 1975-76. P.W.3, a clerk of the Gram Panchayat was examined to identify Ex.A-1 and to confirm the contents thereof. As against this evidence, the defendant did not adduce any evidence worth mentioning to substantiate his case that the building was constructed prior to 1957. The trial Court rightly rejected the evidence of the 1st defendant as D. W. 1 that he saw the construction when he was six years old. The concurrent findings of fact on this aspect cannot be disturbed in the second appeal. It must therefore be held that the building was completed by March, 1976, if not a few months earlier.

6. Now, the core question that has been argued with vehemence by the learned Counsel for the appellant remains to be considered. The learned Counsel Sri Suresh Kumar contends that the civil suit was not maintainable and the Courts below had no jurisdiction to grant a decree in favour of the plaintiffs for recovery of possession. It is his contention that the suit premises is governed by the provisions of the Andhra pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 (hereinafter referred to as the Rent Control Act"). His argument runs

on these lines:

Section 32(b) of the Rent Control Act, according to which, the Act shall not apply to any building constructed on or after 26th August 1957, was declared unconstitutional by the Supreme Court in *Motor General Traders v. State of A.P.* AIR 1984 SC 121. The effect of striking down Section 32(b) would be that the provisions of the Rent Control Act must be deemed to be applicable for all the buildings irrespective of the date of construction other than those excluded or exempted by virtue of other provisions of the Rent Control Act. But for exclusion contained in Section 32(b), the suit for eviction could not have been filed in the Civil Court in the case on hand. By virtue of invalidation of Section 32(b), Section 32(b) should never be treated to have been on the statute book in the eye of law and the entire proceedings in the suit culminating in a decree should be null and void. The suit was lifeless from the inception and the decree passed in such suit has no sanctity of law. It is also argued that the exemption granted by the State Government after the Supreme Court's judgment is of no avail to the respondent-plaintiff and the exemption notification could only save the suits instituted after the effective date of exemption.

7. The learned Counsel for the respondents, on the other hand relied upon the exemption granted under G.O.Ms. No. 636 and contended that the provisions of the Rent Control Act have no application for the suit building and it is immaterial that the exemption was granted during the pendency of the suit. Inter alia, he relied upon the judgment of the Bombay High Court in *Shiv Bhagwan Moti Ram Saraoji Vs. Onkarmal Ishar Dass and Others*, and the Division Bench judgment of this Court in *R.K. Gupta's case* (1 supra). He pointed out that the decisions cited by the appellant's Counsel have no application to the present case.

8. With regard to the effect of declaring Section 32(b) unconstitutional vis-a-vis pending suits or other proceedings, the judgment of the Supreme Court in *M/s. East India Corporation Ltd. Vs. Shree Meenakshi Mills Ltd.*, on which the learned counsel for the appellant has placed strong reliance has to be referred to.

9. In *East India Corporation case*⁴, the Supreme Court was dealing with a case in which the suit was instituted by the landlord at a time when the building in question did not come within the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, in view of the exclusionary provision contained in Section 30(ii) of the said Act, which excluded the buildings with monthly rent of not more than Rs. 400/- from the purview of the said Act. Clause (ii) of Section 30 was struck down by the Supreme Court after the decree was passed in the suit and after the leave was granted by Supreme Court in SLP. The question that arose therein was, whether in view of this subsequent declaration, the decree of the Civil Court could be given effect to. The Supreme Court answered the question in the negative and observed as follows:

"At the time of the institution of the suit, the building in question did not come within the ambit of the Act owing to the exclusionary provision contained in

clause (ii) of Section 30, but after leave to appeal was granted by this Court, the applicability of the Act was extended to the building by reason of the decision of this Court in *Rattan Arya and Others Vs. State of Tamil Nadu and Another*, declaring the invalidity of Cl.(ii) of Section 30 on account of its inconsistency with Article 14 of the Constitution. Whatever be the consequence of that declaration—whether it has rendered the statutory provision null and void and of no effect or merely inoperative, unenforceable and dormant to be revitalised on subsequent removal of the constitutional ban, in either event, the Civil Court acting without the aid of the exclusionary provision in Clause (ii) of Section 30 during the period of invalidity, has become *coram non iudice* and its proceedings resulting in the decree a nullity."

Following this judgment, Maruthi, J. held in *Kantamsetti Bennayya Vs. Pandi Saraswathi*, that a Civil Court has no jurisdiction to pass a decree for eviction when once the Supreme Court declared Section 32(b) of A.P. Rent Control Act as unconstitutional notwithstanding the fact that the suit was instituted at a time when Section 32(b) was in force. The learned Judge disapproved of the view taken by this Court in *S.A. Hakim Saheb v. P.V.K. Setty* 1989 (2) ALT 28. In that case, Lakshmana Rao, J. (as he then was) took the view that a suit filed when Section 32(b) was on the statute book would be maintainable notwithstanding the subsequent invalidation of the section by the Supreme Court because, according to the learned Judges, the right of the party to file an eviction suit crystalized on the date of filing of the suit and such right remains unaffected by the quashing of Clause (b) of Section 32. The same view was taken by Motilal B. Naik, J. in *Yadatnma v. Mallesh* (2 supra). Maruthi, J. held that in view of the later judgment of the Supreme Court in *East India Corporation case*⁴ the broad proposition laid down in *Hakim Saheb's case*⁶ (which was reaffirmed in *Yadamma's case* (2 supra)) cannot be sustained. I also endorse the view expressed by Maruthi, J. in this regard though the ultimate decision in those cases could perhaps be justified from the standpoint of exemption G.O. But the judgment of Maruthi, J. should be further analysed in order to see whether the principle applied therein has any application to the facts and the controversy arising in the present case. The principle enunciated by Maruthi, J. following the decision of the Supreme Court in this:

"In the case where proceedings were initiated under a provision which was subsequently declared as unconstitutional and violative of Article 14 of the Constitution, the provision is deemed to be non-est from its inception and consequently the proceedings initiated and the decree passed by the authority under an unconstitutional provision shall be declared as a nullity, unless the proceedings have become final and decrees are executed."

10. It may be noted that in the case dealt with by Maruthi, J., the suit was filed in 1981 and the decree was passed in 1988. By the date of the decree, G.O.Ms. No. 636 exempting all the buildings for a period of ten years from the date of their construction was in force. The effect of that notification issued u/s 26 of the

Act was not considered by the learned Judge although noticed by her. The reason seems to be that on the facts of the case, that aspect did not arise for consideration. The finding of the trial Court in that case was that the appellant was not entitled to the protection of G.O.Ms. 636 as there was no evidence that the building was constructed ten years prior to the issuance of the G.O. This finding was not reversed by the appellate Court. In the face of this finding, any expression of opinion by the High Court in the second appeal as to the effect of G.O.Ms. No. 636 on the decree passed in the suit would have been academic. That is why, probably, Maruthi, J. refrained from a discussion on the larger question whether by virtue of the exemption G.O. the suit gained its efficacy. Some of the observations of Maruthi, J. towards the end make it clear that the cases covered by the exemption G.O. stand on a different footing. Referring to the two decisions of this Court in Hakim Saheb case (6 supra) and Morisetti Mohan Rao Vs. Tata Subbaiah and Others, , the learned Judge observed: "Those were the cases where proceedings were initiated before the Civil Court during the operation of the G.O. exempting the building from the provisions of the Rent Control Act from the date of construction. The question that arose for consideration in those two cases was whether after the expiry of the period of ten years provided under the G.O., the proceedings initiated in the Civil Court will get automatically terminated or whether the proceedings have to be continued notwithstanding the expiry of the G.O." That is how those two judgments were distinguished by Maruthi, J. Incidentally, it may be noted that this point of distinction may be relevant only so far as Morisetti Mohan Rao Vs. Tata Subbaiah and Others, . is concerned. In Hakim Saheb's case (6 supra) the question indicated by the learned Judge in the above passage did not come up for consideration at all. Notwithstanding this inaccuracy, it is fairly clear that Maruthi, J. was of the view that the cases governed by G.O.Ms. No. 636 stood on a different footing. The judgment rendered by Maruthi, J. in Bennayya's case (5 supra) cannot, therefore, be pressed into service to counter the argument based on G.O.Ms. No. 636.

11. Now a word about the genesis of G.O.Ms. No. 636, G.A.D. dated 29-12-1983. It is to be borne in mind that the exemption granted u/s 26 of the Act under the aforesaid G.O. is not something de hors the decision of the Supreme Court in Motor General Traders case (3 supra). Taking clue from the observations of the Supreme Court in that very case, the notification was issued. This is what the Supreme Court significantly said in paragraphs 29 and 31:

"The effect of striking down the impugned provision would be that all buildings except those falling under clause (a) of Section 32 or exempted u/s 26 of the Act in the areas where the Act is in force will be governed by the Act irrespective of the date of their construction.

At paragraph 31, it was held:

"It is always open to the State Legislature or the State Government to take action by amending the Act itself or u/s 26 of the Act, as the case may be, not

only to provide incentive to persons who are desirous of building new houses, as it serves a definite social purpose but also to mitigate the rigour to such class of landlords who may have recently built their houses for a limited period as it has been done in the Union Territory of Chandigarh as brought out in our recent judgment in Punjab Tin Supply Co., Chandigarh v. Central Government (Writ Petitions Nos. 9935-41, etc., decided on Oct., 20th, 1983 (reported in Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others,). The question whether new legislation should be initiated to exempt newly constructed buildings for a limited period of time on the pattern of similar legislation undertaken by different States or to exempt such class of buildings for a given number of years from the provisions of the Act by the issue of a notification u/s 26 of the Act is one for the State Government to decide."

12. In the background of these observations made by the Supreme Court itself, the State Government promptly stepped in and got a notification issued by the Governor u/s 26 of the Act with effect from the date of the Supreme Court judgment to alleviate the hardship caused to the building owners. According to that notification, ten year-old buildings stand excluded from the purview of the Act. The building with which we are concerned in this second appeal is one such building.

13. Construing the G.O., a Division Bench of this Court consisting of Amareswari, J. and S.S.M. Quadri, J., in R.K. Gupta v. Sartaj Karan (1 supra) held that all buildings whether they are constructed prior or subsequent to the G.O. are exempt for a period of ten years from the date of construction. The Division Bench further held that the suit for eviction filed during the period of exemption could be continued and disposed of even after the exemption period expires. The learned Judges stressed that any other construction would frustrate the very objective of issuing the notification. These conclusions of the Division Bench were based on two judgments of the Supreme Court which it followed.

14. Applying the principles laid down by the Division Bench in the aforementioned case, it is clear that the building in question falls within the purview of exemption implying thereby that the Rent Control Act will have no application in relation to the building for a period of ten years from the date of its construction. According to the findings of the Courts below, the construction was completed during the year 1975-76. If so, upto 1986, the building could be out of clutches of the Rent Control Act. It is evident that the building was very well within the exemption provision by the time the decree was passed in the instant case because ten years" period did not expire by the effective date of exemption i.e., 26-10-1983. Even the date of filing the suit fell within the crucial period of ten years. No doubt, the suit was instituted at a point of time when the exemption was not provided for by the Governor. But, that hardly makes any difference as I would elaborate later. The crucial point to be noted for the present is that by the time the issue as to jurisdiction was framed, the trial taken up and the decree passed, the exemption provision was in force. If so, I do not see any

legal impediment for the maintainability of suit. The ratio of the Division Bench judgment in R.K. Gupta's case (1 supra) applies with greater force to the case on hand.

15. As already noted, the learned Counsel for the appellant has contended that the suit instituted when G.O.Ms. No. 636 was not promulgated had no legs to stand even for a moment and it does not survive in law to absorb the subsequent developments and draw force from them. It is dead from its inception, according to the learned Counsel. I am unable to countenance this argument in the abstract which overlooks start realities. Let us take stock of the factual ralities consistent with the settled legal principles. At the time when the suit was filed, Section 32(b) was on the statute book. Hence, there was no occasion for the trial Court to nip the suit in the bud by refusing to take cognizance of the suit. Assuming for the sake of argument that the suit itself was incompetent and that infirmity must be deemed to be writ large on the face of the suit at the inception itself, can it be said that such suit did not have legal existence at all and cannot be taken up for trial? The answer plainly is in the negative. The only way by which the suit which was registered by the Court could be effaced out of existence was by rejecting the plaint on the ground that it was barred by law. Until and unless such step is taken, the suit has its physical and legal existence. The Court retains seisen over the suit atleast to determine whether the suit is barred by any law or otherwise. It is well settled that where debatable questions touching the jurisdiction of the Court are involved the Court can very well reserve its verdict on the point of jurisdiction till the end of trial or in a proper case, it may try the question of jurisdiction as a preliminary point. In either case, the suit cannot be said to be non-est or still-born even if ultimately it is held to be not entertainable.

16. In this background, one cannot say that the suit in the present case must be ignored for all practical purposes and should be regarded as of no consequence. The suit for all intents and purposes did survive factually and legally till it went up to trial. Its complexion had changed by the time it came up to the stage of framing of issues. By that time, the exemption G.O. came into force and it had the effect of excluding the buildings constructed ten years prior to the effective date of the G.O. from the purview of the Rent Control Act. The disability or ban the suit suffered at its initial stage was removed by subsequent subordinate legislation. The suit became fully qualified to proceed to trial culminating into a judgment and decree. At no point of time, the suit became extinct or obliterated in a manner known to law. The suit which was vulnerable to attack on the ground of jurisdictional bar implied by the Rent Control Act drew its sustenance by the subsequent statutory notification. This, in my view, is the plain legal position.

17. The learned Counsel for the appellant then invokes the principle that the rights of parties will have to be determined on the basis of rights available to them on the date of suit. This well-known principle was reiterated by the Supreme Court in Atma Ram Mittal Vs. Ishwar Singh Punia, . However, there is

yet another principle which is equally important and has been absorbed since long in the realm of civil jurisprudence. It is trite to say that the Court could and ought to take into account subsequent events including subsequent changes in law to do complete justice between the parties. In the field of Rent Control law itself, such principle has been applied by the Apex Court atleast in three decisions.

18. In *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, , Krishna Iyer, J. speaking for the Full Bench of the Supreme Court while reaffirming the principle that the right to relief must be judged to exist as on the date a suitor institutes the legal proceedings, was emphatic in pointing out that - "If a fact, arising after the lis has come to Court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy". The learned Judge then said:

"We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceedings provided the rules of fairness to both sides are scrupulously obeyed."

It was further pointed out that the power to make note of subsequent events was not limited to the primary stage alone, but even the appellate or revisional Courts can exercise that power. In that case, the High Court, at the stage of revision took into account the fact that during the pendency of the proceedings, the landlord came into possession of another non-residential building and rejected relief on that ground the Supreme Court saw no illegality in doing so.

19. In *Vineet Kumar Vs. Mangal Sain Wadhwa*, , the question that arose was whether the new U.P. Rent Act will be attracted if the building completed ten years during the course of litigation. In that case, the building was not ten years old on the date of the suit. But during the pendency of the litigation, it completed ten years. The moment a building becomes ten years old reckoned from the date of completion, the new Rent Act would become applicable. The argument that the Court had to decide the case on the basis of cause of action that accrued prior to the filing of the suit and not on a new cause of action was negated by the Supreme Court. Relying upon the decision in *P. Venkateswarlu's* case (9 supra), the Supreme Court found no difficulty in applying the protection of the new Rent Act which became applicable to the premises during the pendency of the litigation. Thus, the case was decided on the basis of the change in law that was brought about during the pendency of the proceedings.

20. In *Majati Subbarao Vs. P.V.K. Krishna Rao (Deceased) by Lrs.*, , the Supreme Court observed:

".....It is well settled that the Court hearing a suit or appeal can take into account events which are subsequent to the filing of the suit in order to give

appropriate relief or mould the relief appropriately."

In that case it was held that the denial of title of the landlord could form a ground for eviction even though such denial was not anterior to the eviction petition.

21. The judgment of the Division Bench of the Bombay High Court consisting of Chagla, C.J., and Bhagwathi, J. in *Shiv Bhagwan v. Onkartnal* (3-A supra) is more directly in point. In that case, on the date on which the suit was instituted, Vikhroli, wherein the suit land was situate, did not form part of Greater Bombay and not within the ordinary original jurisdiction of Bombay High Court. But by reason of a subsequent enactment, Vikhroli was brought within the original jurisdiction of the Bombay High Court. Thus, when the suit came on for hearing before the Court, the Immovable property situate at Vikhroli was within the original civil jurisdiction of the High Court. The argument on behalf of the defendants that he had a right to have the suit heard in the District Court of Thana and cannot be deprived of that right by subsequent legislation was negated in the following words:

"Now, as I said before, the defendants have no vested right in any particular forum. This Court was bound to take notice of the change in the law and was bound to administer the law as it was when the suit came on for hearing. Therefore, if the Court had jurisdiction to try the suit when it came on for disposal, it could not refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the date when it was instituted."

It is true that was a case of change in forum. But the principle is that a suit which suffers from lack of jurisdiction may shed that infirmity on a change of law and draw its sustenance from such change. Of course it is a different matter if the change in law is held to be prospective not influencing the pending suits and proceedings. But, as already discussed, having regard to the language and object of G.O.Ms. No. 636 which is beneficial in nature, the ten year-old buildings constructed even before the effective date of the notification will be excluded from the purview of the Rent Control Act. If so, the suit building will be out of clutches of the Rent Control Act throughout the period starting from 1976 to 1986. The suit was filed and even the decree was passed within this crucial period. The decree is thus fully protected by the notification issued u/s 26 of the Act.

22. There is yet another decision cited by the learned Counsel for the respondents which needs reference. In *Irfan Ahmad Vs. Abdul Wahid and Others*, , the Civil Court had no jurisdiction to entertain the suit when it was filed. However, during the pendency of the suit, the U.P. Zamindari Abolition and Land Reforms Act came into force under which a suit can be filed in a Civil Court. Ganeshwar Prasad, J. observed that the subsequent acquisition of jurisdiction by the Civil Court had the effect of making the suit a proper suit before the Civil Court and the Civil Court became competent to proceed with it despite the

original want of jurisdiction.

23. In view of the foregoing discussion, the suit must be held to be maintainable in law, though for reasons different from those assigned by the Courts below. In view of the answers to questions (1) and (2), the third question need not be answered because the appellant is not entitled to any relief and he was liable to be evicted. However, as I am of the prima facie view that the appellant was evicted in violation of the stay order granted by this Court, I am initiating proceedings suo motu under the Contempt of Courts Act by a separate order.

24. In the result, the second appeal fails and is hereby dismissed. No costs.