

(2003) 07 P&H CK 0140
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1476 of 2003

Pioneer Timber Products and Another	Vs	APPELLANT
Om Prakash Aggarwal and Another		RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13

Citation : (2003) 135 PLR 250 : (2003) 2 RCR(Rent) 403

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : S.D. Bansal, for the Appellant; R.S. Raj, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The petitioner is a tenant on an industrial Plot in Chandigarh. Respondents have filed an ejectment petition u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Rent Act) in the year 1999. During the pendency of the proceedings before the Rent Controller, a Notification was issued by the Chandigarh Administration which reads as under:

GOVERNMENT OF INDIA EXTRAORDINARY PUBLISHED BY AUTHORITY
CHANDIGARH THURSDAY, NOVEMBER 7, 2002 (KARTIKA 16, 1924 SAKA)
FINANCE DEPARTMENT NOTIFICATION THE 7th NOVEMBER, 2002

No. I985-UTFI(I)2002/9055 - in exercise of the power conferred by Section 3 of the East Punjab Urban Rent Restriction Act, 1949 read with the East Punjab Urban Rent Restriction Act (Extension to Chandigarh) Act, 1974 (Act No. 54 of 74) and the Govt. of India's notification No.5.0.22(5) dated 8th January, 1950., the Administrator, Union Territory, Chandigarh is pleased to direct that the provisions of the aforesaid Act shall not apply to buildings and rented lands whose monthly rent exceeds Rs.1500/-.

Sd/- FinanceSecretary ChandigarhAdministratio"

2. The petitioner herein moved an application under Section 151 of the CPC for dismissal of the Rent Petition in view of the said Notification on the ground that now the petition u/s 13 of the Rent Act does not come within the purview of the Rent Act, therefore, the ejectment petition is not maintainable and is liable to be dismissed. Said application was dismissed by the learned Rent Controller relying upon a judgment of Hon'ble Supreme Court reported as *M/s. Ambalal Sarabhai Enterprises Ltd. Vs. M/s. Amrit Lal and Co. and Another*, wherein it has been held that in spite of repeal of the statute, the proceedings initiated under the Old Act would continue in terms of Section 6(c) of the General Clauses Act as the landlord has an accrued right in continuation of such proceedings.

3. The learned counsel for the petitioner has relied upon *Parripati Chandrasekhar Rao and Sons Vs. Alapati Jalaiah*, ; *M. Subbarao and Sons Vs. Yashodamma and Others*, and *Sultan Mohiyuddin v. Basheer Ahmed Shariff* 4 2002(2) R.C.R. 518 (S.C.). It is contended that the effect of notification dated 7.11.2002 is that the Rent Act is not applicable to the premises in dispute, therefore, the ejectment petition filed prior to 7.11.2002 cannot continue and has to be dismissed as one without jurisdiction. The right of the landlord to seek ejectment is only if the Act is applicable. If Act has ceased to apply to the premises in dispute, the ejectment petition is not maintainable.

4. On the other hand, learned counsel for the respondents contended that the matter is squarely covered by the judgment of Hon'ble Supreme Court reported as *M/s Ambalal Sarabhai (supra)* relied upon by the learned Rent Controller wherein identical situation under the Delhi Rent Control Act, 1958 was in issue and it has been held that a landlord or tenant are relegated to seek their rights and remedies under the common law once the protection given to a tenant under the Rent Act is withdrawn, except in cases where S.6 of the General Clauses Act, 1897 is applicable.

5. After considering the various contentions of the parties, I am of the opinion that the order passed by the learned Rent Controller holding that the Rent Controller has jurisdiction to continue with the petition filed prior to the repeal of the Act on 7.11.2002 is perfectly justified.

6. In *Ambalal Sarabhai's* case the provisions of Delhi Rent Control Act were made inapplicable to tenancy where monthly rent exceeds Rs.3500/- w.e.f. 1.12.1988. The question which arose in the said case was whether the ejectment proceedings initiated prior to 1.12.1988 when Rent Act was made applicable to such tenancies would continue or not. The Supreme Court in *Ambalal Sarabhai's* case considered *Parripati's* case and found that there is a material difference between the rights which accrued to the landlord under the common law and the protection which is afforded to the tenant by such legislation as the Rent Act. In the case of tenant, the protective shield extended to him runs only as long as the special legislation operates. In the case of tenant protection does not create any vested right which can operate beyond the period of protection or during the period the protection is not in existence.

7. It may be noticed that in Parripati's case it was the tenant who approached the Court for relief under the A.P. Rent Control Act. The Court considered the distinction between the two situation and held:

"According to us there is a material difference between the rights which accrue to a landlord under the common law and the protection which is afforded to the tenant by such legislation as the Act. In the former case the rights and remedies of the landlord and tenant are governed by the law of contract and law governing the property relations. These rights and remedies continue to govern their relationship unless they are regulated by such protective legislation as the present Act in which case the said rights and remedies remain suspended till the protective legislation continue in operation. Hence while it can legitimately be said that the landlord's normal right vested in him by the general law continue to exist till and so long as they are not abridged by a special protective legislation in the case of the tenant, the protective shield extended to him survives only so long as and to the extent the special legislation operates. In the case of the tenant, therefore, the protection does not create any vested right which can operate beyond the period of protection or during the period the protection is not in existence. When the protection does not exist, the normal relations of the landlord and tenant come into operation. Hence, the theory of the vested right which may validly be pleaded to support the landlord's case is not available to the tenant.

8. In Sarabhai's case, the Hon'ble Supreme Court examined the scope of Section 6 of the General Clauses Act and it was held as under:

"25. As a general rule, in view of Section 6, the repeal of an statute, which is not retrospective in operation, does not prima facie affect the pending proceedings which may be continued as if the repealed enactment were still in force. In other words such repeal does not affect the pending cases which would continue to be concluded as if the enactment has not been repealed. In fact when a lis commences, all rights and obligations of the parties gets crystalised on that date. The mandate of Section 6 of the General Clauses Act is simply to leave the pending proceedings unaffected which commenced under the unrepealed provisions unless contrary intention is expressed. We find Clause (c) of Section 6, refers the words "any right, privilege, obligation acquired or accrued under the repealed statute would not be affected by the repealing statute. We may hasten to clarify here mere existence of a right not being acquired or accrued, on the date of the repeal would not get protection of Section6 of the General Clauses Act.

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35. In view of the aforesaid legal principle emerging, we come to the conclusion since proceeding for the eviction of the tenant was pending when repealing Act came into operation. Section 6 of the General Clauses Act would be applicable in the present case. As it is landlord's accrued right in terms of Section 6. Sub-

section (c) of Section 6 refers to "any right" which may not be limited as a vested right but is limited to be an accrued right. The words any right accrued in Section 6(c) is wide enough to include landlord's right to evict a tenant in case proceeding was pending when repeal came in. Thus a pending proceeding before the Rent Controller for the eviction of a tenant on the date when the repealing Act came into force would not be affected by the repealing statute and will be continued and concluded in accordance with the law as existed under the repealed statute."

9. Reference of the judgment of Hon"ble Supreme Court in M. Subbarao and Sons Vs. Yashodamma and Others, and Sultan Mohajudeen v. Basher Shauff 2002(2) R.C.R. 518 is misconceived in M. Subbarao's case Karnataka Rent Act came into force w.e.f. 31.12,2001, wherein the order of ejectment attained finality on 11.10.2000. The tenant was granted 18 months time to vacate the premises and no proceedings were pending when the new Act came into force. It was held that Section 70(2)(C) would be applicable and the proceedings would stand abated. Both the cases involved interpretation of Section 70 of the Act which is not the situation in the present case. 10. Consequently, in view of Sarabhai's case, it is held that the eviction proceedings initiated u/s 13 of the Rent Act can continue in spite of Notification dated 7.11.2002.

Consequently, there is no merit in the present revision petition. Dismissed.