
(1943) 01 CAL CK 0012
In the Calcutta High Court

Prasanna Dev Raikat

APPELLANT

Vs

Bisseswar Dass Gupta and Others

RESPONDENT

Date of Decision : 22-01-1943

Acts Referred:

Bengal Tenancy Act, 1885 — Section 21, 7, 75A(1)

Citation : AIR 1944 Cal 46

Hon'ble Judges : Pal, J;Akram, J

Bench : Full Bench

Judgement

Akram, J.—This appeal by the plaintiff arises out of a suit for enhancement of rent of a tenure u/s 7, Ben. Ten. Act. The trial Court decreed the suit in part allowing enhancement from 1345 B.S. Section The defendants therefore preferred an appeal. The lower appellate Court upon a construction put upon 8. 75A, Ben. Ton. Act, dismissed the suit, against that decision the plaintiff filed the present appeal. It has been urged before us by the learned advocate for the appellant that the interpretation put upon Section 75A, by the Court below was erroneous and that the suit had been dismissed upon a wrong view of the Section; that the decision in AIR 1936 49 (Privy Council) , referred to by the learned District Judge had no application to the present case. In our opinion the above contention seems to be correct. Section 75A (i) suspends all provisions of the Bengal Tenancy Act, relating to enhancement of rent for a period of ten years from 27th August 1937, that Section came into operation from 18th August 1938, the decree in the suit was passed on 18th November 1937 and signed on 23rd November 1937 i. e., prior to the Section coming into force the decree in itself was a valid decree but only was inoperative for a period of ten years from 27th August 1937, u/s 75A (2) (a). When it was appealed against, it was liable to be set aside or modified or confirmed, the appeal Court however could not look into the matter as in the meanwhile Section 75A had been passed, the (result therefore should be that the appeal would remain pending so long as Section 75A (1) was in force.

2. The case in AIR 1936 49 (Privy Council) , in our opinion has no application to the facts of the present case. In that case there was a change with retrospective effect in the substantive law in respect of the validity of transfers of occupancy holdings by tenants prior to a certain date and under certain circumstances also subsequent thereto and there was no saving Clause or exception made in favour of pending suits in which the validity of any transfer was questioned. It was held that the suits were not excluded and were affected by the alteration in the law. Here it is a case merely of suspension of the law with effect from a certain date. The result in my view will be that during the period of suspension the matter cannot be dealt with in appeal. In the above view of the matter we set aside the judgment and the decree of the Court below and direct that the appeal be kept pending during the period that Section 75A (1) remains in force and thereafter disposed of in accordance with law. Parties in this appeal will bear their own costs.

Pal, J.

3. This appeal is by the plaintiff in a suit for enhancement of rent of a tenure u/s 7, Ben. Ten. Act. The suit was instituted on 14th December 1936. The defendants resisted the claim alleging inter alia (i) that the rent of the tenure was fixed in perpetuity and was not liable to any enhancement (ii) that there existed a customary rate payable by persons holding similar tenures in the vicinity and that no enhancement exceeding this customary rate can be allowed. The learned Subordinate Judge on 18th November 1937, decreed the claim of the plaintiff in part and enhanced the rent from Rs. 86 per annum to Rs. 627-10-10 per annum with effect from 1345 B.S. (i.e., from 14th April 1938). The defendants preferred an appeal against this decree on 3rd January 1938. During the pendency of this appeal the Bengal Tenancy (Amendment) Act, 1938 (Bengal Act 6 of 1938) was passed which by its Section 21 inserted in the Bengal Tenancy Act, the following sub-heading and Section, namely.

Suspension of provisions relating to enhancement of rent

75A (1) All the provisions of this Act relating to enhancement of rent are hereby suspended for a period of ten years with effect from 27th August 1937.

(2) (a) All decrees and orders enhancing rent passed under any of the provisions of this Act on or after 27th August 1937, and before the date of the commencement of the Bengal Tenancy (Amendment) Act, 1938, are hereby declared to be inoperative from the date of such decree or Order until the expiry of ten years referred to in Sub-section (1) (b) Any provision providing for enhancement of rent contained in any contract entered into between a landlord and a tenant during the period of ten years referred to in Sub-section (1) is hereby declared to be inoperative during the said period.

(3) Notwithstanding anything contained in this Act or any other law, the period during which a decree, Order or contract is rendered inoperative under this Section shall not be taken into account in computing any period under the law of

Limitation nor in construing the terms of the contract.

This Bengal Act 6 of 1938, came into force on 18th August 1938. On 28th November 1939 the appeal before the District Judge came up for hearing and the learned District Judge allowed the appeal and dismissed the suit solely on the ground that on a proper construction of the new Section 75A (1), Ben. Ten. Act, the claim for enhancement was not maintainable.

4. Mr. Mukherjee appearing in support of the present appeal before us contends:

(1) That the suit having been instituted on 14th December 1936, the suspension of the provisions of the Bengal Tenancy Act relating to enhancement of rent by the new Section 75A of the Act did not affect the plaintiff's right to have the enhancement claimed.

(2) That the plaintiff was entitled to have his claim determined according to the provisions of the Act as they stood on 14th December 1936, and that, therefore, the appeal should have been heard and disposed of on the merits by applying the relevant provisions as these stood irrespective of the new Section 75A.

(3) That at the worst the hearing of the appeal might have been adjourned during the period of suspension enacted by Section 75A.

5. It cannot be denied that the new Section 75A is expressly made retrospective to a certain extent. The Section was inserted by Bengal Act 6 of 1938, which came into force on 18th August 1938. Clause (1) is expressly given retroactivity from 27th August 1937. Clause (2) (a), is also made retroactive to a certain extent. It suspends the operation of all decrees and orders enhancing rent passed on or after 27th August 1937, and before 18th August 1938 (Act 6 of 1938). Clause (2) (b) is also retroactive in so far as, it renders inoperative any contract for enhancement of rent entered into during the period from 27th August 1937 to 18th August 1938.

6. The question is whether, if the provision of Clause (1) be applied to a suit for enhancement instituted before 27th August 1937, it is given retroactivity and if so, whether such retroactivity can be ascribed to this provision. A law is retroactive if it affects the acts of an individual or things done so as to prevent these from giving rise to or creating a right allowed by the law of the date on which they are done. Law may not have anything to do with simple hopes or expectations, nor has it anything to do with mere powers granted by the statutes until the fact on which they are based has happened. If and when the fact happens the right is acquired and if a new law is made to affect such fact or right, it is given retroactivity. In this particular case, as soon as the suit for enhancement was filed by the plaintiff he acquired a right to enhancement according to the law of the date on which he instituted that suit. This happened on 14th December 1936. If the Act which came into force on 18th August 1938, can affect the plaintiff's right to enhancement of rent and his relief in respect of such right sought for in that suit, then the Act operates retrospectively. The

question, therefore, is whether such retroactivity can be ascribed to this new law.

7. We are now considering the effect of Bengal Act 6 of 1938 on a suit instituted before the date, back to which the relevant provision of the Act has expressly been given retroactivity. Section 8, Bengal General Clauses Act (Act 1 of 1899) in giving the effect of repeal of any enactment provides that

unless a different intention appears, the repeal shall not (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under 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 ... as if the repealing Act had not been passed.

This provision is identical in terms with Section 38 (2) (c) and (e), English Interpretation Act, 1889 (52 and 53 Vict. C. 63) as also with Section 6 (c) and (e) (Indian) General Clauses Act (Act 10 of 1897). There can be no doubt, therefore, that had the relevant provisions of the Bengal Tenancy Act been repealed by the Bengal Act 6 of 1938 with retrospective effect from 27th August 1937, this repeal would not have affected a suit instituted before that date. The question is whether suspension of the provisions as enacted by that Act makes any difference in this respect. "To suspend" is "to interrupt," "to cause to cease for a time." When certain provisions of a statute are suspended for a certain period, these are, as it were, repealed temporarily for that period. I do not see any difference in principle so far as the question of retroactivity of such repeal or suspension is concerned. It is a fundamental Rule of construction that no statute shall be construed so as to have retrospective operation, unless its language is such as plainly to require such a construction. The same Rule involves another and a subordinate rule, to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary. A statute is given retrospective effect when it is construed as taking away or impairing any vested right acquired under existing laws.

8. It is not in accordance with sound principles of interpreting statutes to give them a retrospective effect: *Mohammad Abdus Samad v. Kurban Hussain*, 31 I.A. 30. Extremely plain language would be needed to deprive of its legal consequences an act done before the passing of a statute. The general Rule of law undoubtedly is that except there be a clear indication either from the subject-matter or from the wording of a statute, the statute is not to receive a retrospective construction. In fact, we must look at the general scope and purview of the statute, and at the remedy sought to be applied, and consider what it was that the Legislature contemplated.

Perhaps no Rule of construction is more firmly established than this that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation otherwise than as regards matter of procedure unless that

effect cannot be avoided without doing violence to the language of the enactment.

9. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only: *Main v. Stark* (1850) 15 A. C. 384. That the Legislature has demonstrated an intention to enact retrospectively to a certain extent is not sufficient to warrant a retrospective operation carried beyond the strict meaning, of the terms used. The very intent of this Rule of interpretation is to prevent interference with rights of property except in cases-where the unmistakable language of the Legislature demands a retrospective construction. The theory of non-retroactivity of laws owes its origin to the needs for security. But there are always two opposing elements to be reconciled-the need for security and the need of promulgating new texts in the interest of social change. It is not surprising that legal science has not yet succeeded in constructing any practical system which will satisfy both. No more than approximations can be discovered. The solutions generally accepted are connected especially with the idea of static security; he who by virtue of an old law has acquired a certain situation of fact should keep it, even if a new law forbids such acquisitions. On the other hand, if an individual is menaced in his dynamic security, he profits no more by the old law. If a person had expected to avail himself of his right, for example, to build on his land, he is at the mercy of any new law regulating construction. He had counted on doing something under the old law; this he can no longer do, and he shall be more or less in the position of one contracting party who sees the other withdraw his promise. But the limit between static and dynamic security is not easy to establish. In the complexity of actual life they contain notions separate or intertwined according to the particular case in view. The theory of non-retroactivity dates from an epoch in which security was the principal consideration. In one day the theory of evolution has deeply impressed our minds, security is less considered, and attention is given to smoothing the way for necessary transformations. Thus, the tendency is to say that a new law should respect the facts of the past, but may dispose of the future at will.

10. A new law cannot affect acquired rights because they are derived from acts fulfilled under the protection of the old laws. The acquired rights comprehend any permissible act capable of financial valuation exercised over an object which is capable of becoming part of the estate. Every right is an acquired right, which is the resultant of an act, legal when done, although the occasion giving it value has not occurred before the new law, provided that the right by the terms of the law of the time when it was done could have a financial value. It is clear that Clause (1) is not expressly given retroactivity beyond 27th August 1937. The question, therefore is whether there is any clear indication either from the subject-matter or from the wording of the Section that it should be given retrospective construction so as to extend its retroactivity to the date of the suit. There is nothing in the subject-matter of Section 75A, Ben. Ten. Act, which will entitle us in our construction of the Section to deviate from the well accepted

rules of construction. It is suggested that the object of the new Section 75A is clearly to give exemption to the tenants from any enhancement operating during the period of ten years specified in the Section. This object shows that the Section was intended to prevent any enhancement operating during this period irrespective of the question when the proceedings for such enhancement were started.

11. This is really begging the whole question. The Section is not expressed in the form of any prohibition to the Courts from decreeing a claim for enhancement. Nor does it by its terms prohibit enhancement of rent. It only says that the relevant provisions shall remain suspended. When a plaintiff institutes a suit claiming some relief in respect of a right, he thereby acquires a substantive right to get the relief determined with reference to the law of the time when he takes this action. The institution of the suit does not give rise to mere hope or expectation but a substantive right as stated above. In my opinion the principle underlying the doctrine of non-re-troactivity of a law shall apply to such a case. I cannot see any distinctive feature in the fact that an enhancement when decreed will operate only in the future. Sections 6 to 9, Ben. Ten. Act, deal with the question of enhancement of rent of a tenure and Sections 27 to 37 deal with similar questions in respect of a raiyati. Even assuming that these provisions do not create the right to enhance the rent or the liability to enhancement, but only regulate the relief in respect of an already existing right or liability arising out of the legal relation of landlord and tenant and existing outside those provisions the plaintiff acquired a valuable right to the relief as allowed by the law of the date of his suit by instituting the suit and it will be giving retroactivity to the law repealing or suspending these provisions if such repeal or suspension be allowed to affect that relief. This should be avoided unless the statute expressly assumes that amount of retroactivity or unless that effect cannot be avoided without doing violence to the language of the enactment. There is nothing in the language of the enactment which would compel us to give retrospective effect to it to the above extent.

12. The enactment is expressly given retroactivity up to a certain date (namely 27th August 1937). The Legislature was evidently conscious of the fact that but for this express provision the new law would not be effective from that date. If the Legislature wanted to give it larger retroactivity, there is no reason why it could not give expression to this intention in clear terms. The following positions seem to be clear from the provisions of Section 75A. Ben. Ten. Act: (1) If a suit for enhancement of rent is instituted before 27th August 1937, and also finally decreed before that date, the decree remains in force and is operative (2) If a suit for enhancement is instituted before 27th August 1937, but is finally decreed during the period from 27th August 1937 to 18th August 1938, the decree remains inoperative till 27th August 1947. (3) If a suit for enhancement is instituted after 27th August 1937 and is finally decreed before 18th August 1938 the decree remains inoperative till 27th August 1947. (4) If a suit for enhancement is instituted after 27th August 1937, and is pending hearing by the

Court of first instance on 18th August 1938, the suit must be dismissed. Section 75A (1) is expressly made retrospective to this extent. But the question is what will happen in the following cases: (1) A suit for enhancement is instituted before 27th August 1937 but is still pending hearing on 18th August 1938. (2) A suit for enhancement instituted after 27th August 1937, is decreed by the first Court before 18th August 1938 but is pending in appeal on 18th August 1938. (3) A suit for enhancement is instituted before 27th August 1937, and (a) is decreed before that date but is pending in appeal on 18th August 1938, or (b) is decreed after 27th August 1937, but before 18th August 1938 and is pending in appeal on 18th August 1938.

13. Applying the accepted rules of interpretation as pointed out above, the first of the three cases illustrated above will fall to be decided with reference to the provisions existing at the time of the institution of the suit.

14. The plaintiff may thus be entitled to have a decree for enhancement. The anomaly that will be created thereby is that there is nothing in the Section to render this decree inoperative. Its operation is not suspended by Clause (2) of the Section as it is made outside the period covered by the Clause. Had the decree been made a few days earlier, namely, before 18th August 1938, it would have been inoperative. This can hardly be the intention of the Legislature.

15. In the second of the three cases taken by way of illustration it may be within the pro. vince of the appellate Court to reopen the decree and dismiss the suit as the provisions are suspended retrospectively so as to cover the date of the suit. For the decree itself being made inoperative for a particular period, the appeal itself becomes temporarily infructuous for and during that period. The position in 8 (a) is similar to that involved in the first case above discussed. The case in 3 (b) is the one before us for our consideration. Undoubtedly the decree of the first Court is rendered inoperative by Clause (2) of the Section. But the question is how this fact affects the appeal already preferred. If the appeal can be heard, in my opinion, the appellate Court shall have to determine the respective cases of the parties with reference to the law existing at the date of the institution of the suit. This date is outside the period covered by the express retroactivity of the enactment and I do not see anything in its language which necessarily extends its retroactivity to that date. But as the decree of the first Court has been rendered inoperative by Clause (2) and will remain inactive for a certain period it may be that the appeal has thereby become in-fructuous temporarily for that period. I feel inclined to this latter view as otherwise there will be this anomaly that though the decree of the first Court, if allowed to stand without any appeal from it, would have been inoperative by reason of Clause (2), the decree of the appellate Court will be fully operative, it having been made after 18th August 1938 and there being nothing in the Section to affect its operation. The Court of appeal below was certainly wrong in dismissing the suit on the ground that the provisions of the Act relating to enhancement of rent were in the meantime suspended. As I have pointed out above, this suspension would not affect any

right or liability, any relief in respect of such right or liability or any remedy involved in a suit or proceeding started outside the period over which the statute has extended its retroactivity. I therefore agree that this appeal should be allowed and I concur in the Order proposed by my learned brother.