
(1978) 05 AHC CK 0124
In the Allahabad High Court
Case No : Writ No. 1312 of 1977

Ram Kumar

APPELLANT

Vs

First Addl. District and Sessions Judge and Others

RESPONDENT

Date of Decision : 15-05-1978

Acts Referred:

General Clauses Act, 1897 — Section 6
Prevention of Corruption Act, 1947 — Section 5(1), 5(2), 5(3)
Uttar Pradesh General Clauses Act, 1904 — Section 6
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(1), 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Amendment
Act, 1976 — Section 26(3)

Citation : (1978) AWC 405

Hon'ble Judges : Satish Chandra, C.J.;Yashodanandan, J;K.C. Agarwal, J

Bench : Full Bench

Advocate : S.N. Verma and A.N. Verma, for the Appellant; L.P. Naithani, S.S. Bhatnagar, R.N. Bhalla and S.P. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, C.J.—Finding a conflict of opinion in single Judge decisions of this Court, another Hon"ble Judge has referred this writ petition for decision by a larger Bench.

2. The Respondent landlord applied for release of the house u/s 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. His case was that he was carrying on business at Varanasi. He has become old and has retired from the business, which is being run by his sons. He wants to come back to Bareilly, his home town, for settling there permanently. He needs the house in dispute, of which he is the owner, for his personal residence. The Petitioner tenant has acquired a house from the Co-operative Housing Scheme under a hire-purchase agreement. The tenant has let out that house at Rs. 300/- per month as rent.

3. The tenant contested. He denied that the landlord wished to retire from his business or settled down at Bareilly. The house which he had purchased is not vacant, because it was in possession of a tenant.

4. The Prescribed Authority found that the landlord really wished to retire from his business and settle down at Bareilly. The tenant had acquired a house and, therefore, he was not entitled to raise any objection. The application for release was allowed. The tenant went up in appeal, which failed. The findings were affirmed. The tenant has now come to this Court.

5. Learned Counsel for the Petitioner submitted that (1) That Explanation (i) to Section 21(1) of the Rent Control Act is not attracted;

(2) That Explanation (ii) having been repealed during the pendency of the proceedings in the court below, became inapplicable and they could not in law rely on it.

6. Explanation (i) to Section 21(1) provided - "Explanation. In the case of a residential building-(1) Where the tenant or any member of his family has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this Sub-section shall be entertained."

7. The language of this Explanation emphasises that the tenant must have built or acquired a residential building, in presenti. The word used is "has" in both the sub-clauses of the Explanation. It, therefore, appears to us that this explanation would apply to a case where the tenant has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building, after the coming into force of the Rent Control Act of 1972 on 18th July, 1972. It will not cover a case where the tenant may have built or otherwise acquired in a vacant state or got vacated after acquisition a residential building prior to 15th July, 1972. In the present case the tenant had pleaded that he had acquired the house under hire-purchase agreement in 1969 or 1970. Neither the Prescribed Authority nor the District Judge has recorded any finding as to the time when the house was acquired. The application of the first Explanation to the present case is hence doubtful.

8. The Second Explanation to Section 21(1) provided-

(ii) Where the landlord was engaged in any profession, trade, calling or employment, away from the city, municipality, notified area or town area within which the building is situate and by reason of the cessation of such engagement, he needs the building for occupation by himself for residential purposes, such need shall be deemed sufficient for purposes of Clause (a).

The finding is that the landlord has proved his plea. On the finding the second Explanation squarely applies.

9. Learned Counsel for the Petitioner, however, submitted that the Explanation was deleted, by Amending Act 28 of 1976, which came into force on 5th July, 1976. The Second Explanation provided a rule of evidence. Hence, its repeal was retrospective, in the sense that it applied to pending suits. The courts below were in error in basing their judgment on this Explanation.

10. Learned Counsel appearing for the landlord submitted that Explanation (ii) provided a rule of substantive law. Its repeal could not affect its previous operation or anything duly done thereunder. Reliance was placed upon Clause (d) of Section 6 of the U.P. General Clauses Act.

11. Section 21 provides for release of building in occupation of tenant at the instance of the landlord. Clause (a) of Sub-section (1) permits release on the ground that the building is bona fide required by the landlord for occupation by himself. Explanation (ii) provides that where its ingredients have been established the landlord's need shall be deemed sufficient for purposes of Clause (a). This Explanation is a conclusive evidence clause, intended to shut out evidence for proving bona fide need. Explanation (iv) is also material. It provides:

(iv) The fact that the building under tenancy is a part of a building the remaining part whereof is in the occupation of the landlord for residential purposes, shall be conclusive to prove that the building is bona fide required by the landlord.

This again is a conclusive evidence clause. If the fact mentioned in it is proved, it is conclusive to prove the bona fide need. Nothing else is material or relevant.

12. The question is whether Explanations (ii) and (iv) lay down a rule of evidence.

13. The problem whether a rule laying down an irrebuttable presumption is a rule of evidence or substantive law was considered by the Supreme Court in *Izhar Ahmad Khan Vs. Union of India (UOI)*, . Gajendragadkar, J speaking for the court, held-

In deciding the question as to whether a rule about irrebuttable presumption is a rule of evidence or not...we can answer the question only after examining the rule and its impact on the proof of facts A and B.

14. In substance the position is that if fact A is inherently relevant in proving fact B and to any rational mind it would have a probative or persuasive value in the matter of proving the existence of fact B then the rule would be one of evidence. But if fact A is inherently not relevant in proving the existence of fact B or has no probative value, then it would be a rule of substantive law.

15. The fact which requires proof is that the building is bonafide required by the landlord for occupation by him self. Explanation (ii) says that where the landlord was engaged in any profession etc. in any other city and by reason of cessation of such engagement he needs the building for occupation by himself for residential purposes it shall be sufficient to prove the bona fide need in Clause (a).

16. A bona fide need to get one's own house can arise in diverse circumstances. The fact that one was carrying on business in another town and because of its cessation one has to come back his hometown is to our minds one situation in which the landlord can be said to bona fide need his own house for occupation by himself. The fact mentioned in the explanation (ii) has, therefore, a probative value to prove the bona fide requirement. It cannot be said that this fact is inherently irrelevant or that it has no probative value in that behalf. The rule in the Second Explanation is thus a rule of evidence and not of substantive law. The same is, in our opinion, true of Explanation (iv). The fact that the landlord is residing in a portion of the building, the remaining part where of is under tenancy, has also some probative value for establishing bonafide requirement. Both these explanations lay down rules of evidence by prescribing irrebuttable presumptions. We are in agreement with the view expressed by a Division Bench of this Court in *Gopinath Goel Vs. 1st Addl. Dist. Judge, Meerut and Another*, that the irrebuttable presumptions incorporated in Clauses (ii) and (iv) of the Explanation are rules of evidence and not of substantive law.

17. The general presumption is that rules of evidence operate retrospectively. In *Memon Abdul Karim Haji Tayab Vs. Deputy Custodian General, New Delhi and Others*, it was held that it is well settled that procedural amendments of law apply, in the absence of anything to the contrary, retrospectively in the sense that they apply to all actions after the day they come into force, even though the action may have begun earlier.

In *Smt. Dayawati and Another Vs. Inderjit and Others*, the Supreme Court ruled that if a new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the court of trial as well as the Court of Appeal must have regard to an intention so expressed, and the Court of Appeal may give effect to such a law even after the judgment of the court of first instance.

18. In *Tikaram & Sons v. Commissioner of Sales Tax, U.P. AIR 1968 SC 1284* the Supreme Court observed that presumption against retrospective construction has. no application to enactments which affect only the procedure and practice of the court.

19. Retrospective repeal is fictional. It means that one should treat an imaginary state of affairs as real. Then one has to imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it - *East End Dwellings Co. Ltd. v. Finsbury Borough Council 1952 AC 109* at p. 132.

Lord Asquith followed up these observations by saying:

The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

20. These observations have been accepted by the Supreme Court in several

decisions- (1) M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd., (2) Sri Jagadguru Kari Basava Rajendraswami of Gavimutt Vs. Commissioner of Hindu Religious Charitable Endowments, Hyderabad, Daya Singh v. Dhan Kaur AIR 1974 SC 655 para 7, (4) Raja Shatrunji Vs. Mohammad Azmat Azim Khan and Others, The repeal of Explanations (ii) and (iv) being retrospective, it must also be held that any proceeding decided by applying them would have to be corrected as if the Explanations were not there on the statute book on the day when the proceeding was decided either by the trial court or by the Court of Appeal.

21. There can hence be no doubt that rules of evidence are matters of procedure. No litigant has any vested right in them. Alterations in the rules of procedure do not affect anyone's substantive rights. They normally operate retroactively, so as to catch pending proceedings. An appeal is a rehearing or continuation of a suit - see Garikapati Veeraya v. N. Subbiah Chaudhary AIR 1958 SC 540. The courts are bound to take notice of the change in the procedure and apply it, no matter the lis may be pending trial or on appeal. The contrary view taken in Gopi Nath God's case (supra) does not lay down the correct law.

22. Learned Counsel for the Respondents submitted that when a legislative enactment is repealed, Section 6 of the General Clauses Act is attracted. Under Clause (b) thereof such repeal does not, unless a different intention appears, affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. In support, reliance was placed upon a Full Bench decision of this Court in Om Prakash v. Moti Lal 1958 AWR 239. In that case the revisional jurisdiction against a small cause court decree, which vested in the High Court, was transferred to the District Judge. The Full Bench held that Section 6(b) was applicable and jurisdiction already exercised by the High Court will not be affected by the repeal. The Court placed the matter on the footing of the general principle that a new state of the law ought to affect the future, not the past.

23. The question of jurisdiction of courts stands on a different footing than the procedure or practice to be followed in courts. In the present case the jurisdiction of the Prescribed Authority was not affected. It continued to have authority to try the case. The procedure was altered.

24. For the Respondents reliance was placed upon Nani Gopal Mitra Vs. The State of Bihar, . In that case a public servant was convicted u/s 5(2) of the Prevention of Corruption Act, 1947. During the pendency of appeal against the conviction, Sub-section (3) of Section 5 was repealed by Anti-Corruption Laws (Amendment) Act, 1964, and the same Amending Act inserted a new Clause (e) in Section 5(1). Section 5(1) defined criminal misconduct in the discharge of duty. Sub-section (3) laid down a rebuttable presumption. After the amendment this rebuttable presumption was repealed, and in its place Clause (e) was added. It was, in substance, the same; but instead of a rebuttable presumption, the same facts became part of the offence. The net position was that if it was proved that a

public servant was in possession of property or pecuniary resources disproportionate to his known sources of income, previously the Court was entitled to draw a presumption, unless the contrary was proved, that the accused was guilty of criminal misconduct. After the amendment this fact became an ingredient of the offence of criminal misconduct. In other words, the situation became worse for the accused. In this background the Supreme Court held that even though the repeal and re-enactment came in while the appeal was pending before the High Court, since the presumption u/s 5(3) had been drawn by the trial court, the High Court could validly also do so. On construing the nature of the provisions repealed and re-enacted, the Supreme Court came to the view that though the repeal of procedural laws is normally retrospective, in this case it was not, because, in their opinion, the re-enactment of Clause (e) created a new disability or obligation, which generally is not retrospective. In the present case, the repeal of Explanations (ii) and (iv) does not create new disabilities or obligations, or even rights. The case is distinguishable.

25. Learned Counsel also placed reliance on *Dewaji Vs. Ganpatlal*, where it was observed that if the legislature intended to oust the jurisdiction of the civil court, it must say so expressly or by necessary implication. On an interpretation of the Amending Act, it was found that there was no such intention.

26. Amending Act 28 of 1976, which repealed the second and the fourth Explanations, does not specifically say if the repeal would be retrospective or prospective. It is true that in respect of several other provisions introduced by the same Amending Act it was specifically mentioned that the introduction will be with retrospective effect; but since nothing was said in respect of the repeal of Explanations (ii) and (iv), it must be presumed that the legislature intended that the normal rules of construction of statutes will apply. The general rule is that the presumption against retrospection does not apply to legislation concerned merely with matters of procedure or evidence; on the contrary, provisions of that nature are to be construed as retrospective - Halsbury's Laws of England, 3rd Ed. Vol. 36, p. 426, para 647.

27. It is presumed that procedural statutes are intended to be fully retrospective in their operation, that is to say, are intended to apply not merely to future actions but equally to proceedings instituted before their commencement - Halsbury's Laws of England, 3rd Ed. Vol. 36, p. 426, para 647. This being the general rule, it will apply, in the absence of anything to the contrary being indicated by the legislature. Clause (b) of Section 6 of the General Clauses Act will hence not apply because a different intention appears from the nature of the provision which has been repealed.

28. Learned Counsel for the Respondents invited our attention to the transitory provisions contained in Section 26(3) of the Amending Act No. 28 of 1976. It provides for discharge of an order of eviction passed under Clause (a) of Section 21(1) of the principal Act in respect of a tenant of a particular class, namely, State Government, or a local authority, or a public sector corporation or a

recognised educational institution. Learned Counsel argued that no such provision was made for discharge of an order of eviction in respect of tenants where the order of ejectment has been passed on the basis of Explanations (ii) and (iv).

29. The two situations are different. Section 26(3) refers to an order of eviction on any ground whatsoever. It protects tenants of a specified class only. This transitory provision was made in consequence of the new policy introduced by the Amending Act 28 of 1976 to exempt from the operation of the Act public buildings and buildings belonging to or vested in a recognised educational institution. "Public Building" has been defined by Clause (o) of Section 3 to mean any building, inter-alia, taken on lease by a Government, local authority or any public sector, corporation. In order to effectuate this new policy the transitory provision specifically discharged orders of eviction, of such tenants. The legislature had no such policy in view in respect of tenants who were merely affected by Explanations (ii) and (iv). That is why no such transitory provision was made.

30. To summarize: The repeal of Explanations (ii) and (iv) was completely retrospective. It will cover proceedings, whether pending trial or on appeal, on 5th July, 1976, when the Amending Act 28 of 1976 came into force.

31. In the present case, on 5th July, 1976, the matter had been decided by the Prescribed Authority, and it was pending in appeal. The appeal was decided on 26th July, 1977. The learned District Judge did not in fact rely on the second Explanation. He chose to rest his decision on the first Explanation. He held that the first Explanation was applicable, and so the tenant was not entitled to raise any objection.

32. As observed earlier, there is no finding as to the date or time when the tenant acquired the house on hire-purchase system. His allegation was that he had done so in 1969 or 1970. If that is true, the first Explanation will not be attracted. Since the question whether the acquisition was before or after 15th July, 1972, has not been decided, the case has to go back.

33. In the result, the petition is allowed, the impugned orders are set aside, and the matter is remanded to the lower appellate court with the direction that it shall record a finding on the question whether the tenant had acquired the house before or after 15th July, 1972. The question of application of Explanation (ii) will not be gone into as it is not available.

34. In the circumstances of the case, the parties will bear their own costs in this Court. The costs of the courts below shall abide the event.