

(1954) 09 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Application No. 184/5 of 1954

Sakeena Banoo

APPELLANT

Vs

Afzul Begum

RESPONDENT

Date of Decision : 17-09-1954

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1954) 09 AP CK 0023

Hon'ble Judges : Misra, C.J; Mohd. Ahmed Ansari, J

Bench : Division Bench

Advocate : Jalil Ahmed, for the Appellant; Jahangir Ali, for the Respondent

Final Decision : Allowed

Judgement

Mohd. Ahmed Ansari, J.—This application was originally filed under Art. 226 to reverse the order by the Sub-Judge, Hyderabad District, dismissing an appeal against the order of the Rent Controller that had allowed a petition by Afzal Begum for the fixation of fair rent of a shop owned by the applicant before us.

2. The Writ application was admitted because it was then urged that the Hyderabad Rent Control Order of 1353 Fasli under which the two judgments in the case had been given had ceased to be operative. Later this Court in another case held the aforesaid Order to have lapsed as it was passed under the War Emergency Regulations which had ceased to be law after the War emergency had terminated. Soon after the decision, the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954, came into operation and S. 31 (2) of the new Act provides that so far as may be the Act should be applied to orders passed under the old Rent Control Order. The new Act thus saves earlier proceedings, and once proceedings under the earlier Order are deemed to be under the new Act, it follows that they would be revisable under S. 21 of the new Act which gives the right to file revision in this Court on certain grounds. This application has accordingly been treated as one under S. 21.

3. The question raised is whether the lower Courts had acted without Jurisdiction in treating Afzul Begum, the opposite party to this application, as a tenant of the applicant, and in allowing her petition for fixing a fair rent. To appreciate the several arguments urged on behalf of the parties certain facts in the case should now be stated. It appears that one Bashir-un-nissa Begum had sold certain properties including the shop whose fair-rent had been fixed by the lower Courts to Sakina Begum, the applicant before us. The sale was by a registered deed of 21-7-1948, and the vendor is said to have migrated to Pakistan. Proceedings were thereafter started under the Hyderabad Administration of Evacuee Property Regulation; and the Custodian of the Evacuee Property confirmed the sale in favour of the applicant by his order of 26-7-1950.

From the documents filed on behalf of Afzul Begum, it appears that the Custodian's office first demanded from her the surrender of possession of the shop on 18-9-1950; then the Assistant Custodian on 29-9-1950, gave a notice for Rs. 160 as the rent, and later a sum of Rs. 60 was paid in the office. This payment is borne out by the receipt and the certificate of the Custodian's office which are dated 3-10-1950. Though there were further demands from the Custodian's office on 7-10-1950, no further money appears to have been given because the Deputy Custodian on 28-10-1950, passed the order that no action should be taken regarding the property.

4. The petition before the Rent Controller for the fixation of the fair rent was filed on 10-4-1951, and it alleges that Afzul Begum and one Mahboob Sheriff had purchased a flour-mill located in the shop from one Narsing Pershad that Afzal Begum purchased from Mahboob Sheriff his share on 29-3-1951, so that she became the sole owner. The petition then refers to the proceedings in the Custodian's office, the deposit of Rs. 60 as the rent of the shop for three months, and prayed for the fixation of the fair rent. In her reply the applicant claimed that one Syed Abu Ayub had taken on rent the shop on 15-1-1949, thereafter he made defaults whereupon a suit for the arrears of rent was filed against him in the Small Causes Court and decreed. She denies the possession of the property ever having been taken by the Custodian, and complains that certain tenants with a view to harass her started proceedings in the aforesaid office, whereupon she appeared and got the confirmation of her sale. She further alleges that it is possible that Abu Ayub may have wrongly transferred his tenancy and an application for ejectment had been filed.

5. The Rent Controller first rejected the petition on the ground that the Custodian's Department had acquired rights in the property and the proceedings could not be continued until the petitioner got her rights as a tenant established there. But an appeal against the order was allowed on the ground that the property had been already released by the Custodian and there was nothing to preclude the Rent Controller from fixing a fair rent. After the remand the Controller held that Afzal Begum had proved herself to be in the occupation of the shop from 1949, and Rs. 25 per month was the fair rent. The appellate

authority has taken the same view and dismissed the appeal.

6. It was argued by the learned Advocate of the applicant that the acceptance of Rs. 60 by the Custodian's office was subsequent to the confirmation of sale in favour of the applicant, and that at the time of the receipt the Custodian had no vested interest in the property to enable him to create any tenancy in favour of, Afzal Begum. On behalf of Afzal begum it was urged that the property had undoubtedly vested in the Custodian, and she had been in possession of the shop during the period; that the Custodian had prior to the confirmation of the sale the jurisdiction to let the property and the subsequent acceptance of the rent did not necessarily mean that the amount was received for the subsequent period; that having regard to the large amount demanded in October 1950, some of the arrears obviously related to the months prior to the date of the confirmation, and in view of the general rule of appropriating payments towards past debts the receipt for Rs. 60 should be construed as payment towards rents for the months earlier to the date of the confirmation of sale.

The learned Advocate of the opposite party argued that the subsequent acceptance of Rs. 60 by the Custodian's office was, therefore, towards the period when the estate was still vested in the Custodian and it recognises a tenancy in favour of Afzal Begum, which after the property had been restored, would be continued under the proviso to sub-s. (3) of S. 15, Hyderabad Administration of Evacuee Property Regulation, 12 of 1359F.

7. In our opinion the proviso in S. 15, which was relied upon by the Advocate for Afzal Begum, does not apply where the property is released by the Custodian in favour of a purchaser. In this connection we would point out that the scheme of the Hyderabad Regulation, like the Central Act by which it was repealed was to provide for the custody and administration of the evacuee properties. The title of the evacuee was not affected by it, and, therefore, restoration of the property to him or to his heirs was contemplated under it. The Custodian was constituted a statutory agent with very large powers; but it followed that his acts during the period the properties vested in him, would be binding on the evacuee or his heirs after the properties were restored.

Accordingly we find in S. 15 of the Regulation which deals with the power of restoration to the evacuee the proviso making leases by the Custodian binding on the persons who so get the properties unless they be determined by operation of law or by lapse of time. The case of a transferee for value on confirmation of his sale is fundamentally different. The leases by the Custodian during the period the transaction was still unconfirmed and the property was vested in him, could not be attributed to the transferee as those of his statutory agents. Again once the sale was confirmed the transferor or his statutory agent could not by conduct subsequent to the transaction adversely affect the title or possession of the purchaser. A proviso in S. 37 like one to sub-s. (3) of S. 15 would be inconsistent with the scheme of the Act and it is not to be found in the former section, which deals with the power of the Custodian regarding confirmation of sales by the

evacuees.

The possession of the property was for the proper exercise of the statutory powers under S. 37, vested in the Custodian. But once he had exercised the powers and confirmed the sale, his interest in the property would terminate and so would his leases under the general law of the Transfer of Property Act. Because of this fundamental difference between restoration under S. 15 and release under S. 37, we think the proviso relied upon by the Advocate of Afzal Begum is walled in S. 15, and cannot be applied to the facts of this case where the Custodian had confirmed a sale. The result is that the lease by the Custodian of the Evacuee Property to Afzal Begum cannot be extended for the period subsequent to the release of the property in favour of the purchaser and had expired. Nor do we think that the word "heirs" in S. 15 covers the case of a purchaser for value.

This being the legal position it follows that even the appropriation by the Custodian's office of the amounts paid by Afzal Begum towards the rents for the period during which the property was validly vested in the Custodian, would create only a tenancy terminable on the release of the property which cannot be relied upon by Afzal Begum for claiming fair rents for time subsequent to the release.

8. Having dealt with the legal position under the Hyderabad Administration of Evacuee Property Regulation of 1359 F, and the general law, it has next to be examined whether the tenancy so created in favour of Afzal Begam was one covered by the provisions of the Hyderabad Rent Control Order of 1353 F, or by the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954. Under S. 26 (1) (b) (i) of the new Act the Government is expressly excluded from the operation of the Act and the Custodian's office forms part of the Government. Then S. 8, Hyderabad Administration of Evacuee Property Regulation, gave the Custodian the right of taking possession of the property and under S. 11 of the same law he had powers of varying or cancelling the lease. Both these powers are obviously inconsistent with the provisions of the new Rent Control Act. Therefore, Afzal Begum cannot assert that during the period the property had vested in the Custodian she got some statutory rights which continued even after the interest of the lessor had ceased. We think that in absence of such statutory rights in favour of Afzal Begum the general rule of law that the termination of the superior tenure affects all sub-tenures, would apply, and Afzal Begum had no tenancy in the shop on the basis of the receipts by the Custodian's office on which she could take proceedings before the Rent Controller.

9. Having reached the conclusion that there was no privity of contract between the applicant and Afzal Begam, nor any privity of estate, it follows that the lower Courts have erred in relying upon the documents of the Custodian's office as establishing a tenancy for purposes of fixing a fair rent. There being no tenancy the lower Courts had acted without jurisdiction in fixing a fair rent, and the absence of this jurisdiction, would constitute a good ground for the exercise by

this Court of its revisional powers under S. 21 (a) Hyderabad Houses (Rent, Eviction and Lease) Control Act. 1954, which we have held earlier in the judgment to be applicable to this case. Therefore this revision should be allowed.

There are, however, references in the reply by the applicant before the Rent Controller and in the earlier judgment of the lower appellate Court to a petition for ejectment of certain persons by the applicant. We are told that this petition has been dismissed. However, it has not been made part of the record of this case, and it is possible that by averment in it or by her subsequent conduct the applicant in this case may have continued the tenancy of Afzul Begum after the Custodian had released the property. By such averment or conduct a new tenancy can be created in favour of Afzal "Begum and on its basis she may be entitled to the fixation of fair rent. The Courts below, however, have not gone into the question.

In these circumstances, we are constrained while allowing this revision petition to remand the case for further enquiry into whether by subsequent conduct either of the applicant or of her authorised agent a new tenancy had been created, in which case the fair rent fixed already would stand & the lower Court need not re-determine the question of fair rent. Otherwise, the petition for fair rent will have to be dismissed.

10. Accordingly we allow this revision petition, remand the case to the Rent Controller for fresh enquiry, and the costs of this application will abide the final judgment in the case.