
(1962) 07 CAL CK 0022

In the Calcutta High Court

Case No : A.F.A. Decree No's. 67 and 68 of 1957

Sm. Prativa Pal alias Sm. Prativa Rani Pal

APPELLANT

Vs

Janhabi Charan Chatterjee alias J.C. Chatterjee

RESPONDENT

Date of Decision : 04-07-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101
West Bengal Premises Tenancy Act, 1956 — Section 40(2), 40(2A)

Citation : AIR 1963 Cal 470 : 67 CWN 522

Hon'ble Judges : Bijayesh Mukherji, J

Bench : Single Bench

Advocate : Asoke Chandra Sen and Monoharan Saha, for the Appellant; Ranjit Kumar Banerjee and Salil Kumar Banerjee, for the Respondent

Final Decision : Dismissed

Judgement

Bijayesh Mukherji, J.—The judgment I render now governs two second appeals 67 and 68 of 1957 -- each by a tenant defendant arising out of actions in ejectment instituted in the Small Cause Court, Calcutta on December 22, 1954 concerning parts of 134/3A Cornwallis Street on the ground floor.

2. In "67", the appellant is Prativa Pal who, it is said, was the tenant of a shop room on a rent of Rs. 35/-a month payable according to the English calendar month. In "68", the appellant is Prativa's father, Girish Chandra Ghosh, who, it is said, held the adjacent shop room in the same premises on the same terms as his daughter.

3. The plaintiff in each of the two actions in ejectment is Janhabi Charan Chatterjee. Necessarily he is the sole respondent in each of the two appeals before me.

4. The two suits for eviction -- one against the father and the other against the daughter -- were grounded on default in payment of rent from June 1953 to January 1954 -- a little more than three occasions of two months' rent within a

period of eighteen months within the meaning of the proviso to Sub-section (3) of Section 14 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 17 of 1950, hereinafter referred to as "the 1950 Act" which governs this litigation. More, the tenancies were determined too by services of notices to quit by the last hour of the last day of January, 1954.

5. The suits were answered by more than one plea absence of default, invalidity and insufficiency of the notices, existence of one tenancy instead of two etc.

6. The learned trial Judge negatived all the pleas and decreed the suits on April 6, 1956. In appeals taken against the decrees, the findings of the learned trial Judge on default and notice were not challenged. What was challenged was the finding on the existence of two tenancies instead of one. The learned appellate Judges held that "there were two tenancies at all relevant times" and dismissed the appeals on September 4, 1956.

7. The defendants -- one in each suit -- have, there-fore, come up to this Court in second appeals.

8. Mr. Sen appearing for the appellants reiterates the point about the existence of one tenancy and not two. But that is a matter which is concluded by the concurrent findings of fact come to by the Court of first instance and the first Court of appeal. I see no error of law which can be said to vitiate this finding. That apart, what error either of fact or of law can there be when the father and the daughter do away with the intervening wall for convenience sake? Only because they do so, their tenancies do not merge into one. I, therefore, see no substance in this point.

9. Mr. Sen next contends that there is no relationship of landlord and tenant between Girish Chandra Ghosh, the appellant in "68" and Janhabi Charan Chatterjee, the respondent. The Indian Educational Stores Limited was the tenant, not Girish -- Mr. Sen concludes. This raises a mixed question of fact and law taken for the first time before me. Worse, it is nowhere to be found in the grounds of appeal. So Mr. Sen is not entitled to be heard even, on such a point.

10. On merits too this contention cannot receive effect. The counterfoils, exhibit 1, show payment of rent by Girish. On top of that, his admission in cross-examination is that the tenancy was taken in his name, though it was occupied by the Indian Educational Stores Limited. If you allow the tenancy to run in your name, if you payment in your own name, it is idle to turn round and say: I am not the tenant, somebody else is. In the face of all this, one can hardly attach any importance to the rest of Janhabi's evidence to the effect that it was argued that the Indian Educational Stores Limited would take one room -- evidence upon which Mr. Sen so strongly relies. That might have been agreed to. But Girish took the lease in the long run as the evidence discussed above indicates. I, therefore reject this contention as well.

11. Mr. Sen's last contention is an interesting one. The ejectment suits governed

by the 1950 Act culminated in decrees on April 6, 1956 when that temporary Act, the 1950 Act, was no more. In view of the Special Bench decision in Tarak Chandra Mukherjee and Others Vs. Ratan Lal Ghosal and Others, , pronounced on December 21, 1956, the 1950 Act is kept alive only for the purposes of all proceedings pending on March 31, 1956 (when the 1950 Act went out and the West Bengal Premises Tenancy Act, 12 of 1956, shortened hereafter into "the 1956 Act", came in) and also on July 27, 1956 (when the West Bengal Premises Tenancy (Amendment) Act, 18 of 1956, with the amended Section 40 (2) providing for the continuance of pending proceedings came into force). But the suits were pending only on one of the two dates -- March 31, 1956 -- and not on July 27, 1956. Sub-section (2-A) of Section 40 of the 1956 Act, as inserted by another Amending Act, 27 of 1959 (came into force on February 29, 1960) purporting to validate all pending proceedings is no doubt there. But it does not add anything new. And if it has added so, here is a case of the legislature trenching on the judicial field. For that Sub-section (2-A) of Section 40 of the 1956 Act deserves to be truck down.

12. The very first premises upon which Mr. Sen rests his contention appears to be wrong. The suits pend on March 31, 1956. Decreed on April 5, 1956, they give rise to appeals in which judgments were delivered on September 4, 1956. So the appeals which are nothing but continuation of suits pend too on July 27, 1956. That, indeed, is clear. To make it clearer still, Mr. Banerjea appearing for the respondent refers me to Explanation to Section 40 (2) of the 1956 Act as substituted and deemed always to have been substituted by the Amending Act 13 of 1956:

"Explanation: In this section "proceeding" includes any suit, appeal, review or revision application for execution, or any other proceeding whatsoever under the said Act."

Thus the test laid down by the Special Bench in Tarak Chandra Mukherjee and Others Vs. Ratan Lal Ghosal and Others, is satisfied and the 1950 Act is kept alive for the two actions in ejectment which are the subject-matter of these two appeals.

13. What I have just held is enough to decide the appeals. And it is scarcely necessary for me to enter into the question of the validity of Sub-section (2-A) of Section 40 of the 1956 Act, as inserted by the Amending Act 27 of 1959 come into force on February 29, 1960. But out of respect to the arguments addressed to me by Mr. Sen and Mr. Banerjee, I shall deal with this matter and record my opinion thereon for what it is worth.

14. Sub-section (2-A) reads:

"(2-A) For the removal of doubts it is hereby declared that notwithstanding any decision of any Court to the contrary, any proceeding pending on the 31st day of March, 1956 which was continued after that date and any decree passed or order made after that date in accordance with the provisions of the said Act in any

such proceeding, shall be deemed to have been validly continued, passed or made as if the said Act had been in force and had not been repealed or had not expired, and no such proceeding, decreed order shall be called in question in any manner merely on the ground that the said Act was not in force when such proceeding was continued, decree was passed or order was made."

15. Though this sub-section opens with the words "For the removal of doubts", it should not be confused with what came to be known in England as "Henry VIII clause" "named after that monarch in disrespectful commemoration of his tendency to absolutism", as Sir C. K. Allen says in *Law and Orders*, Second Edition, at page 194, To quote Sir C. K. Allen further,

"It (the so-called "Henry VIII clause") gives an executive authority power to amend the parent Act, or (usually) any other Act, in order to bring the parent Act into "full operation". Its widest extension is to empower the Minister, "if any difficulty arises", in bringing the Act into operation, to "remove the difficulty by order". Cf. Section 119 of the West Bengal Panchayat Act, 1 of 1957. Sub-section (2-A) of Section 40 of the 1956 Act provides for nothing of the kind. It gives neither the executive nor the Minister a power of dispensation. So whatever it is, it is not the so-called "Henry VIII clause".

16. But it is bold to contend, as Mr. Sen does, that it adds nothing new. It does. It introduces a legal fiction that any proceeding pending on the 31st day of March, 1956 which was continued after that date and any decree passed after that date in accordance with the provisions of the 1950 Act in any such proceeding shall be deemed to have been validly continued or passed as if the 1950 Act had been in force and had not been repealed or had not expired and no such proceeding or decree shall be called in question in any manner merely on the ground that the 1950 Act was not in force when such proceeding was continued or decree was passed. And this deeming provision shall prevail notwithstanding any decision of any Court to the contrary. . (I have omitted the portions not material for the present purpose). Thus, Sub-section (2-A) "Ibid" has only to be paraphrased in order to be convinced that it does add very much indeed new matters. I, therefore, find against Mr. Sen in so far as he contends to the contrary.

17. Mr. Sen finds fault with the word "declared" in the opening words of Sub-section (2-A) "ibid": "For the removal of doubts it is hereby declared ". The proper word according to him should have been "enacted". To my thinking, that makes little difference. The plain meaning of "declare" in the context here is "to make known", "to announce". In the realm of law, "to enact" means "to establish by law". Surely what the legislature declares or announces in a statute is what it establishes by law. So, even to a stickler for exactitude revelling in nuances, Sub-section (2-A) "ibid" cannot go down only because the word used is "declared".

18. Now I take up the remaining branch of Mr. Sen's last contention : that in

enacting Sub-section (2-A) "ibid", the legislature had encroached on the field exclusively reserved for the judiciary. The Courts have been directed, Mr. Sen continues, not to heed to any past decision to the contrary. And the judiciary has been given no opportunity, Mr. Sen concludes, to investigate if the proceedings under the 1950 Act are validly continued. With respect, I cannot agree. If a decision of the Court causes hardship and *Tarak Chandra Mukherjee and Others Vs. Ratan Lal Ghosal and Others*, supra did, in keeping many a proceeding pending on March 31, 1956 but not pending on July 27, 1956 in no man's land, so to say, -- it is the duty of the legislature to step in and to remove that hardship. In enacting Sub-section (2-A) *ibid* the legislature has done no more. Again, the legislature in its wisdom declares that certain proceedings shall be deemed to have been validly continued as if the 1960 Act is still in force. By legal fiction (which is not unknown to law) this is provided for. And it is within the competence of the legislature to do what it has done. Further, no such proceeding shall be called in question simply on the ground that the 1950 Act was not in force when such proceeding was continued, thus leaving the Courts free to decide on other grounds if the proceedings have been validly continued, as Mr. Banerjee rightly contends. So I miss any directive in Sub-section (2-A) *ibid* by which the legislature usurps, the functions of the Court and proceeds to dispose of cases. All the legislature does is to impose a fetter on the Court which cannot call in question a pending proceeding merely on the ground that the 1950 Act was not in force when the proceeding was continued or the decree was passed.

19. In the case AIR 1944 86 (Federal Court) , the Federal Court was called upon to pronounce on a directive contained in Clause (2) of Section 10 of Ordinance No. 3 of 1944 to the effect that in certain circumstances a pending proceeding is discharged. A directive as that is clearly a judicial act and not the enactment of a law. "It is a direct disposal of cases by the legislature itself", to quote from the judgment delivered by Spens, C. J. In the case in hand, the legislature by enacting Sub-section (2-A) has simply enacted a law -- a legislative act. It has not disposed of cases -- a judicial act. True, it has enacted a law by virtue of which certain pending proceedings shall be deemed to have been validly continued. Still it is a legislative act -- and not a judicial act.

20. AIR 1944 1 (Federal Court) , (cited by Mr. Banerjee) holds that an ordinance providing that decisions by Tribunals (found earlier by the Federal Court lacking jurisdiction) should be treated as decisions of duly constituted tribunals does not constitute any exercise of judicial power by the ordinance making authority.

21. Other authorities Mr. Banerjee cites make it more than clear that the provisions Sub-section (2-A) *Ibid* contains cannot be placed in the category of judicial acts. In *Gulabrao Keshavrao Dhole Vs. Pandurang Bhanji Dhomne and Others*, , the legislature enacted the erstwhile Madhya Pradesh Janapada Election Matters Validating Act, I of 1955, and by inserting there a deeming provision (as here) which is but another name for a legal fiction declared that notwithstanding

a decision of the Nagpur High Court to the contrary the electoral rolls shall be deemed to be validly prepared and maintained. In other words, what the Court found to be void, the legislature declared to be valid. But in so doing, the Full Bench of the Bombay High Court holds, the legislature was exercising its legitimate legislative functions.

22. Jadao Bahuji v. Municipal Committee Khandwa, (S) AIR 1956 Nag 167 , emphasizes, following the Federal Court decision in AIR 1944 1 (Federal Court) ante:

"It must be taken to be beyond question that in India the Legislature is competent to put an end to the finality of a decision of a Court and reopen a past controversy and even to pass validating Acts and that enactment of a law having such effects does not constitute exercise of Judicial functions by the Legislature."

23. This passage has been quoted with approval in the Bombay Full Bench decision in Gulabrao Keshavrao Dhole Vs. Pandurang Bhanji Dhomne and Others, , just noticed.

24. The supremacy of the legislature in the legislative field is stressed too in A.K. Gopalan Vs. The State of Madras, . The Attorney General of India In his -- Hamlyn Lectures on the Common Law in India quotes at pages 209-210 the following from A.K. Gopalan Vs. The State of Madras, :

"..... Although our Constitution has imposed some limitations on the legislative authorities yet subject to and outside such limitation our Constitution has left our Parliament and the State Legislatures supreme in their respective legislative fields. In the main our Constitution has preferred the supremacy of the legislature to that of the judiciary"

25. Potti Sarvaiah v. Venkata Narsing Rao, (3) AIR 1955 Hyd 257, holds as much and draws a distinction between an enactment which by its own vigour disposes of a case (when the legislature may be said to have usurped judicial functions) and enactment prescribing a rule of law applicable to certain facts which are to be ascertained by Courts (when the legislature must be held to have been exercising its own function -- a legislative act).

26. Judged by these tests, what the legislature provides for by Sub-section (2-A) is so modest. By a legal fiction, it enacts that certain proceedings shall be deemed to have been validly continued -- purely a legislative act -- leaving it to the Courts to decide the individual cases on their own facts. Thus, if perchance the appellants get out of the frying pan of Sub-section (2) of Section 40 as substituted by the Amending Act 18 of 1956, they do so only to fall into the fire of Sub-section (2-A) of Section 40 as inserted by the Amending Act 27 of 1959.

27. I am, therefore, unable to hold that the legislature by enacting Sub-section (2-A) has overstepped the limits of the legislative field and encroached upon the judicial field. It has not.

28. Thus all the contentions urged by Mr. Sen fail. And the appeals fail too. I, therefore, dismiss the appeals with costs.

29. In these days of house scarcity, the appellants should have reasonable time to fend for themselves; all the more so, when the subject of this litigation is two shop rooms. I, therefore, direct that the decrees I record now shall not be executed earlier than December 31, 1962, provided that the appellants do deposit in the Court of first instance month by month by the 15th day of each current month right from July 1962 the money equivalent of the rent and provided further that the appellants do deposit in the same forum all costs due to the respondent so far by August 31, 1952. Should the appellants herein fail, the decrees will be executable forthwith.

30. Leave to appeal under Clause 15 of the Letters Patent has been asked for. It is refused.