

(1989) 09 OHC CK 0047

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1963 of 1989

Umakanta Pradhan

APPELLANT

Vs

Sub-divisional Judl. Magistrate-cum-House Rent Controller,
Bhubaneswar and Others

RESPONDENT

Date of Decision : 11-09-1989

Acts Referred:

Orissa General Clauses Act, 1937 — Section 5, 5(1)
Orissa House Rent Control Act, 1967 — Section 1(4), 7, 7(2), 7(4)

Citation : (1990) 69 CLT 207

Hon'ble Judges : P.C. Misra, J;J. Das, J

Bench : Division Bench

Advocate : N.C. Pattanaik, B. Mohanty, B. Pattanayak and A.K. Jena, for the Appellant; B.L.N. Swamy, B.V.B. Das and C.S. Jena, for the Respondent

Final Decision : Allowed

Judgement

P.C. Misra, J.—Notice in the matter of admission was issued to the opp. parties out of whom opp. party No. 1, the House Rent Controller appeared through the Addl. Government Advocate and opp. parties 2 to 6 appeared through Mr. B. L. N. Swamy. At the request and consent of both parties, the matter is taken up for final hearing and disposal.

2. The only point involved in this case is whether the House Rent Controller would have jurisdiction to entertain a proceeding under the House Rent Control Act, 1967 after its expiry on 4-5-1988. The facts relevant for the aforesaid limited purpose are as follows:

The Petitioner is a tenant in respect of a house situated at Bhubaneswar. A proceeding under the Orissa House Rent Control Act, 1967 was filed on 8-7-1988 by the landlord against the present Petitioner praying for his eviction. The Petitioner made an application in the trial court to the effect that the proceeding initiated under the said Act shall be dismissed as-not maintainable as the Orissa House Rent Control Act has ceased to be in force with effect from 4- 5-1988. The

learned House Rent Controller by his order. An Annexure-2 held that since the default in the matter of payment of rent is said to have occurred order to May, 1988, i. e. when the prior Act was in force, the opp. parties 2 to 6 can have their remedy under the House Rent Control Act by virtue of the provisions contained in Section 5 of the Orissa General Clauses Act. This order of the House Rent Controller is under challenge in this writ application.

3. The Orissa House Rent Control Act, 1967 (Orissa Act 4 of 1968) received the assent of the President on 17th February, 1968 and Sub-section (4) of Section 1 Provided that it shall cease to have effect on the expiry of 7 years from the date of its commencement. The said period was extended from time to time and the last time when it was so extended was by Orissa Act 15 of 1981 by which the Act continued to be in force upto the 4th day of May, 1988. The said Statute, therefore, expired on 4 -5-1988 by efflux of time and it was, therefore, not required to be repealed by legislation. The question for consideration in this writ application is whether any proceeding can be instituted under the said Act after its expiry, by virtue of the provisions contained in Section 5 of the Orissa General Clauses Act, which is as follows:

5. Coming into operation of enactments:

(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent (a) in the case of a Central Act, made before the commencement of the Constitution, of the Governor-General, and (b) in the case of an Act of Parliament, of the President.

(3) Unless the contrary is expressed a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

These provisions are the Same as in Section 6 of the Central Act (Act 10 of 1897). A plain reading of the aforesaid Section will indicate that its provisions cannot be invoked in regard to Statutes which are of a temporary nature. The Supreme Court in a decision reported in State of Orissa Vs. Bhupendra Kumar Bose, approved the observation of Justice Patanjali Sastri (as he then was) in S. Krishnan and Others Vs. The State of Madras, that the General Rule in regard to a temporary Statute is that in the absence of special provision to the contrary, proceedings which are being taken against a person under it will ipso facto terminate as soon as the Statute expires. The same view was reiterated by Justice Krishna Ayer in the decision reported in Qudrat Ullah Vs. Municipal Board, Bareilly, with reference to Section 6 of the Central Act and it was observed that the provisions in the said Section in relation to the effect of repeal do not ordinarily apply to a temporary Act. Since the Orissa House Rent Control Act was a temporary Statute, the provisions of Section 5 of the General Clauses Act would not ordinarily apply to it but for the provisions contained in Sub-section (4) of Section 1 of the said Act which says that Section 5 of the General Clauses

Act Orissa Act 1/1937) shall apply upon the expiry of this Act as if it had then been repealed by an Orissa Act. We would, therefore, apply the provisions of Section 5 of the General Clauses Act to find out if any new proceeding can be initiated after 4-5-1988 when the said Act expired. Reliance has been put on Clause (c) of Section 5 of the Orissa General Clauses Act which provides that where any Orissa Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. Assuming for the sake of argument that, the default in payment of rent on the part of the tenant, as has been claimed by the landlord in this case, had occurred prior to the expiry of the Act, whether any proceeding can be instituted for eviction of the tenant on that ground after the Act had expired. It was argued with some force that the tenant having acquired the liability for being evicted for wilful non-payment of rent and the landlord having acquired the right, to evict the tenant on that ground, before the expiry of the Act the said right and liability can be enforced under the provisions of the repealed Act by virtue of the aforesaid provision. Clause (c) of Section 5 of the Orissa General Clauses Act embodies the general principle that the repeal or amendment of an Act does not affect the right already in existence unless a contrary intention is made out expressly or by implication. A close reading of the Section would indicate that what is unaffected by the repeal of a Statute is a right acquired or accrued under it and not a mere possibility of acquiring a right. The distinction has to be kept in mind between a legal proceeding for enforcing a right acquired or accrued and a legal proceeding for acquisition of right. The former is saved by Section 5(c) of the Orissa General Clauses Act and not the latter. It is equally important to note that the right saved by the provisions of Section 5(c) must be a right acquired under the provisions of the repealed Act. Section 7 of the Orissa House Rent Control Act, 1967 enumerates the conditions under which a tenant can be evicted. It provided that a landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf and if the Controller after giving the tenant a reasonable opportunity of showing cause against the application is satisfied that the conditions enumerated in Clauses (ii) to (iv) of Sub-section (2) of Section 7 exist, he can make an order directing the tenant to put the landlord in possession of the house. Sub-section (4) of Section 7 also empowers the Controller for an order directing the tenant to put him in possession of the house, if he requires the house in good faith for the occupation or use of himself, any member of his family or of any person or persons for whose benefit the house is held by him. Assuming for the sake of argument that the default in payment of rent or any other ground for eviction of the tenant enumerated in the said Section arose before the expiry of the Act, it did not create a right in favour of the landlord to be entitled to possession of the house. It merely gave a right to approach the House Rent Controller with a prayer to evict the tenant and to put him in possession thereof. This in our opinion is not a right acquired or accrued within the meaning of Section 5(1)(c) of the Orissa General Clauses Act. In this connection the dictum of Privy Council in the case of

Abbot v. The Minister for Lands, 1896 (AC 425 at p. 431) that the mere right existing in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of that right cannot properly be deemed a "right accrued" was approved by the Supreme Court in the Sakharam @ Bapusaheb Narayan Sanas and Another Vs. Manikchand Motichand Shah and Another, . The right to evict a tenant by, the landlord which was not created for the first time by the aforesaid temporary Statute, namely, Orissa House Rent Control Act, the former created by the Orissa House Rent Control Act for eviction of a tenant by the landlord, it is no more available after the expiry of the Act. Similarly existence of any ground for eviction of a tenant under the House Rent Control Act does not create any absolute corresponding liability to be evicted. The existence of such grounds merely gave jurisdiction to the house Rent Controller to put an end to the tenancy and direct eviction of the tenant. A Statute after its expiry is completely obliterated with effect from the date of expiry except the past pending actions which are saved by the aforesaid provisions of the General Clauses Act. The past action would mean a transaction which has come to an end and a right or a corresponding liability has accrued by that process and a pending action is one which was being pursued immediately before the expiry or repeal of the Act. Thus the House Rent Controller would have no jurisdiction to entertain a proceeding initiated after the expiry of the Act.

4. In the result, we quash the order of the House Rent Controller (Annexure-2) and allow the writ application. There shall be no order as to costs.

J. Das, J.

5. I agree.

Writ application allowed.