

(1997) 05 AHC CK 0191
In the Allahabad High Court
Case No : Civil Revision No. 92 of 1997

Union of India (UOI) and Another

APPELLANT

Vs

Chandra Kiran Jain and Another

RESPONDENT

Date of Decision : 08-05-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 15 Rule 5, 80
Constitution of India, 1950 — Article 254
Provincial Small Cause Courts Act, 1887 — Section 10, 15, 25, 4, 5
Transfer of Property Act, 1882 — Section 106, 107
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2, 21, 21(1), 21(8)

Citation : (1997) AWC 114 Supp

Hon'ble Judges : S.K. Phaujdar, J

Bench : Single Bench

Advocate : D.C. Saxena, for the Appellant; Vinod Kumar Tiwari, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Phaujdar, J.—This revision application u/s 25 of the Provincial Small Causes Courts Act is directed against the judgment and decree dated 4.1.1997 recorded by the Second Additional District Judge, Saharanpur, in S.C.C. Suit No. 2 of 1995. A caveat was lodged by the Plaintiff-Respondents and both the parties were heard on the date of admission itself. The operation of the impugned decree has been stayed till pronouncement of the present order. The parties have been heard in full and the matter is accordingly disposed of at this stage itself.

2. The suit was filed by the present opposite-parties for eviction of the Defendants from the suit premises, for possession and for damages for unlawful occupation. The premises were let out to the Defendants on a monthly rent of Rs. 3,600. This rate of rent being more than Rs. 2,000 per month, the suit was beyond the purview of U.P. Act No. 13 of 1972. Accordingly, the Plaintiff asserted that the general law governing relationship between lessor and lessee would be

applicable to the present set of facts. A notice u/s 106, T.P. Act and another u/s 80, CPC were also served on the Defendants, but they failed to vacate the premises. Only thereafter, the suit was instituted for eviction, for realisation of arrears and for realisation of damages.

3. The Defendants appeared on notice. The admitted dues were deposited under Order XV, Rule 5, CPC (as introduced in the U.P.) and a written statement was filed on their behalf. Tenancy of the Defendants for the suit premises under the Plaintiff was accepted but it was stated in the written statement that the provisions of U.P. Act No. 13 of 1972 would apply and a mere notice u/s 106, T.P. Act was not sufficient and validity of that notice was also challenged and so was service of the notice u/s 80, Code of Civil Procedure

4. The trial court engaged itself to look to certain issues. One of the issues was whether the suit property was to come under the purview of the U.P. Act No. 13 of 1972, as amended by the Amending Act No. 5 of 1995. The other issues framed by the trial court were on the point of arrears of rent, sustainability of the claim for damages, determination of tenancy and proper service of notice u/s 106, T.P. Act and 80, Code of Civil Procedure

5. On the question of applicability of the U.P. Act No. 13 of 1972, as amended by the Amending Act No. 5 of 1995, the trial Court was of the view that the suit was instituted after the introduction of the amendment and, as such, the protection of the U.P. Act No. 13 of 1972 was taken away so far the present premises, were concerned, as the rate of rent was more than Rs. 2,000 per month. He was further of the view that a proper notice had been served and the lease was legally determined and, accordingly, the suit was decreed for eviction and possession and for damages.

6. In the present revision application, the revisionists challenged the impugned order mainly on the true interpretation of Section 2(g) of the U.P. Act No. 13 of 1972 whereby the buildings fetching rent of Rs. 2,000 per month or more have been kept out of the ambit of the Act. It was contended that U.P. Act No. 13 of 1972 was a legislation directed towards the benefit of the tenants and it must be interpreted in a manner so as to fulfil the object of the Act and not to frustrate it. It was argued on behalf of the revisionists that the trial court had based its decision on the rate of rent agreed between the parties and had completely overlooked the fact that this rent was agreed upon through agreement in writing which was not registered, although compulsorily registrable. It was contended that a document which was compulsorily registrable but was not registered, may not be acted upon and may not be informed in court. It was further contended that the parties had no authority to fix a rate of rent only to keep the premises out of the purview of U.P. Act No. 13 of 1972. The learned Counsel also argued that U.P. Act No. 13 of 1972 was a legislation which had received the assent of the President but the Amending Act No. 5 of 1995, through which Section 2(g) had been introduced, had not obtained the assent of the President and, as such, the provisions of the Amending Act could not have overridden the original text of

U.P. Act No. 13 of 1972 and in that light Section 2(g) would be ultra vires.

7. In answer to these arguments, the learned Counsel for the Plaintiff-opposite parties submitted that the question of vires of a legislation may not be challenged in a revision. It was contended further that the Amending Act No. 5 of 1995 did not require assent of the President under the provisions of the Constitution of India. It was argued that under the law, there is no ceiling of rent and Section 2 speaks of "rent" only and not the "standard rents" as determined by a competent authority. It was argued that Section 2(g) must be read as retrospective to cover tenancies existing from a date prior to the introduction of that section as, according to the learned Counsel, Section 2(g) does nothing more than taking away certain protection that was given by the original text of U.P. Act No. 13 of 1972.

8. To determine the points raised in the arguments of the parties, it is necessary to state that law regarding landlord and tenants, the Central Act covering the relationship between a lessor and a lessee is the Transfer of Property Act, 1882. Chapter 5 of this Act deals with leases of immovable property and we may not dilate further the different provisions of this Act than indicating the necessity of termination of a lease before a suit for eviction of a tenant is filed, as required under Sections 106 and 111 of the Act and the necessity of registration of the lease as required u/s 107 of the Act. This section makes it clear that a lease of immovable property from year to year or for any term exceeding one year or reserving an yearly rent can be made only by a registered instrument. All other leases of immovable property may be made either by a registered instrument or by an oral agreement accompanied by delivery of possession. Thus, in the case of a month to month tenancy if thereby any written instrument, it must be a registered one. The law, however, permits a month to month tenancy to be created through oral agreement as well if the same is accompanied by delivery of possession. This general law of lease has been amended in different states by different rent laws and the relevant rent law in Uttar Pradesh is the U.P. Act No. 13 of 1972 which is an Act to provide, in the interest of the general public, for the regulation of letting on rent of, and the eviction of tenants from, certain classes of buildings situated in urban areas and for matters connected therewith. The preamble of the Act clearly suggests that the purpose was to protect the interest of the tenants for certain classes of buildings and not for all buildings. Act No. 5 of 1995 of U.P. introduced Section 2(g) in the Act and this newly inserted section provided that U.P. Act No. 13 of 1972 will not be applicable for buildings whose rent is Rs. 2,000 or more per month. Chapter 2 of U.P. Act No. 13 of 1972 deals with regulation of rent. Section 4 speaks of prohibition of premium and rent payable generally. It provides that no landlord shall take or receive, for admitting a tenant to any building, any premium or additional payment over and above the rent payable therefor, nor shall a tenant take or receive any premium for admitting a subtenant or any other person. Clause 2 of this section says that except as provided in clauses 5, 6, 7, 8 and 10, the rent payable for any building shall be such as may be agreed upon between the

landlord and the tenant and in the absence of any agreement, the standard rent. Section 15 spoke of rent payable in cases of old buildings. Section 6 spoke of effect of improvement on rent. Section 7 deals with liability to pay taxes. Section 8 covers disputes regarding amount of standard rent and Section 10 provides for appeal against orders under Sections 8 and 9. Thus, when a case does not fall in any of the Sections 5, 6, 7, 8 and 10, as is the case in our hands, Section 4 would determine what is the rent of a building and the parties (the landlord and the tenant) have every right to agree upon a particular rate of rent.

9. Section 21(8) of U.P. Act No. 13 of 1972 was referred to in the grounds of revision as having given a special protection against eviction from premises which are in occupation of the Government. Section 21 deals with proceedings for release of buildings under occupation of a tenant and Clause (1)(a) provides for eviction on the ground of bona fide requirement of the landlord. Clause (8) states that nothing in Clause (1)(a) would apply to a building let out to the State Government or to a local authority or to a public sector corporation and/or to a recognised educational institution unless the Prescribed Authority was satisfied that the landlord was a person to whom clause (ii) or (iv) of the Explanation to Section 21(1) is applicable. Thus, it is clear from a reading of the text that Section 21(8) protects against a prayer for eviction on the ground of bona fide requirement and the suit in question being not one on the ground of bona fide requirement, this protection may not be extended in favour of the defence.

10. As to what should be the manner of interpretation of a beneficial legislation, a host of case-law was cited before me. The learned Counsel for the revisionists relied on a decision of the Supreme Court in *Govind Das and Others Vs. The Income Tax Officer and Another*, . The Supreme Court ruled in this case that unless the terms of the statute expressly so provided or necessarily required it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. If an enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. Reliance was placed on another decision of the Supreme Court as in *Municipal Corporation for The City of Poona and Another Vs. Bijlee Products (India) Ltd. and Others*, . It was held herein that any amendment to a statute affecting the legal rights of an individual must be presumed to be a prospective unless it is made expressly or impliedly retrospective.

11. Prior to introduction of Section 2(g) in U.P. Act No. 13 of 1972, there was no ceiling of rate of rent on basis of which a suit was to be taken out of the purview of the said Act Section 2(g) for the first time introduced the provision that a building fetching rent of Rs. 2,000 or more per month would not be covered by the provisions of this Act. This amendment was made in 1995 and was made effective from a particular date from 1994. The suit was filed not only after the aforesaid date of effect but also after passing of the Amendment Act. It is futile, therefore, to go to the question whether Section 2(g) would be prospective or

retrospective as the suit was filed on a date when Section 2(g) was very much there in the statute, and even if the provision was prospective, it would apply to the present set of facts. It was contended that the tenancy being one of a date prior to the introduction of Section 2(g) the rent accrued to the tenant under the old law could not have been taken away by the amendment. The general law between the landlord and tenant is covered by the Transfer of Property Act. Thus, U.P. Act 13 of 1972, as discussed above, was made in the interest of general public for certain classes of buildings. It was, therefore, open for the Legislatures to indicate which class of building would be covered by the Act and which will not be so covered. Introduction of Section 2(g) simply mentions that a particular class of buildings would not be covered by the Act. U.P. Act No. 13 of 1972 gave certain protection to tenants from operation of the general law, that is, the Transfer of Property Act. The amendment simply took away that protection and in that light, it is now the settled law that Section 2(g) must be read as retrospective. The maintainability of the said and the legality of the judgment and decree may not, therefore, be assailed on this ground.

12. It was contended by the learned Counsel for the revisionists that the agreement in question fixing a flat rent of Rs. 3,600 per month had frustrated the very purpose of the Act as the parties had thereby agreed to keep the premises out of the ambit of U.P. Act No. 13 of 1972, such agreement could not have been acted upon. I have already held that the document of agreement could not be read in law as it was not registered. But the tenancy could have been created orally by delivery of possession. The tenancy and the rate of rent are not disputed. It is also not in dispute that the tenancy commenced long prior to introduction of Section 2(g). It does not appeal to reason how at the time of commencement of the tenancy, the parties could have known that a legislation would come, as in Section 2(g), and, therefore, they had obviated such a situation by the agreement. Reliance was placed by the learned Counsel for the revisionists on a decision of the Supreme Court as in AIR 1974 SC 1924. Here was an agreement in the lease-deed that parties would never claim benefit of U.P. Act No. 8 of 1947. It was held that such an agreement could not have been made. The case at our hand, however, is not at all parallel on facts with the case before the Supreme Court. Here is an accepted month to month tenancy on an agreed rent and the exclusion of Act No. 13 of 1972 is by operation of law and not by agreement of parties.

13. It was contended further that the agreement which is inadmissible in law cannot be looked into even for a collateral purpose, and it was also contended that collateral purpose was purpose which was connected with the main purpose. The ingredients of the purpose recited in the lease agreement cannot be said to be collateral to the controversy which was before the court. The terms and conditions of the lease for which the first appellate court had used the document could not be said to be collateral purpose. This view was expressed by the Allahabad High Court in the case in 1991 (2) ARC 90. The learned Counsel proposed to conclude that for rate of rent also, an unregistered document of

lease could not be looked into under the plea of collateral purpose. In my view, this argument is not at all relevant in the present case. It has already been held that the lease-deed, being unregistered one, may not be acted upon but at the same time it has been held that u/s 107, T.P. Act, the lease may be created even orally with delivery of possession. Creation of tenancy, delivery of possession and rate of rent are accepted for which the court was not to look to the lease-deed. It is immaterial, there, fore, whether the rate of rent was a collateral purpose, as indicated in the document of lease. Certain other case-laws were also referred to on this point and, in my view, it would be mere repetition of the same view and I may not, therefore, refer to them.

14. It was argued, as aforesaid, by the revisionists that Act No. 13 of 1972 was passed with the consent of the President and it could not have been amended without the President's assent. The Act No. 13 of 1972 had affected the general law as contained in the Transfer of Property Act and under Article 254 of the Constitution, this State Act for having prevailed in the State of U.P. over the Transfer of Property Act required the assent of the President. But the Amending Act 5 of 1995 of Uttar Pradesh did not affect any of the provisions of the Central Act, i.e., the Transfer of Property Act. Accordingly, it needed no consent of the President to prevail in the State. It was contended that an arbitrary limit of Rs. 2,000 per month have been fixed on the rate of rent to keep certain premises out of the ambit of U.P. Act No. 13 of 1972 and the provisions of Section 2(g) are, therefore, unconstitutional. I do agree with the argument of the learned Counsel for the opposite parties on this point. Vires of an Act may be challenged invoking the writ jurisdiction of the High Court and not in a civil revision. The judgment and decree may not, therefore, be assailed on this ground.

15. All the points raised by the revisionists having failed, the present revision application also fails and is dismissed.