Chetu Ram Vs Asa Nand

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 11, 1961

Acts Referred: Displaced Persons (Compensation and Rehabilitation) Act, 1954 â€" Section 29
East Punjab Urban Rent Restriction Act, 1949 â€" Section 13

Citation: (1962) 1 ILR (P&H) 799

Hon'ble Judges: Inder Dev Dua, J

Bench: Single Bench

Advocate: J.N. Seth, for the Appellant; S.C. Goel, for the Respondent

Final Decision: Allowed

Judgement

Inder Dev Dua, J.
This revision has been; filed in the following circumstances. An application u/s 13 of the East Punjab Urban Rent

Restriction Act was filed by Asa Nand, the landlord, (vm-poriderii in: this Court)" for ejectmenf of Chetu Ram (Petitioner before me) from a house

situated at Panipat. According to the landlord, the house in dispute had been transferred to him by the Rehabilitation Authorities with effect from

1st October, 1955, and conveyance deed was executed on 23rd November, 1959. Chetu Ram was a tenant of the premises in dispute under the

Custodian on a monthly rent of Rs. 2. It was pleaded that Chetu Ram had become Asa Nand"s tenant with effect from 1st October, 1955, and

that the former had also received an intimation from the office of the District Rent and Managing Officer. Ejectment was sought on three grounds,

viz., (a) that Chetu Ram had been in arrears of rent from 1st October, 1955; (b) that the premises were required by Asa Nand for his own

occupation and (c) that Chetu Ram had damaged the house and had impaired its value and utility with the result that it was unsafe and unfit for

human habitation.

2. This petition was resisted by Chetu Ram, who pleaded ignorance about the transfer of the premises to Asa Nand and also urged that the

premises in question were not a residential house but a shop and was also being used as such since a long time. It was further pleaded that rent

was being paid to the Custodian at the rate of Re. 1 per month per shop and that the tenant had not received any intimation from the Department

about the transfer of the premises in favour of Asa Nand. It was, in addition, pleaded that Asa Nand could only be entitled to arrears of rent for

the preceding three years, i.e., from 1st July, 1957 to 30th June, 1960, which would amount to Rs. 72 and that the same was deposited in Court

after becoming aware of the proceedings for ejectment. Rent prior to 1st July, 1957, was pleaded to have become barred by time. The plea that

Asa Nand required the premises for his own occupation was controverted and so were the three other pleas in support of the prayer for

ejectment.

3. On the first date of hearing, the counsel for Chetu Ram stated that the arrears of rent from 1st July, 1957 to 30th June, 1960, came to Rs. 74

out of which Rs. 72 had been deposited in Court and a sum of Rs. 2 on account of arrears of rent, Rs. 6-8-0 on account of interest and Rs. 15 on

account of costs of the application were tendered on behalf of the tenant. This tender was accepted by Asa Nand, but the plea of non-payment

was not given up.

4. On the pleadings, the Rent Controller framed the following issues:

(1) Whether the property in dispute is a residential building ?

(2) Whether the Respondent is not liable to ejectment on the ground of non-payment of rent ?

(3) Whether the Petitioner requires the building in dispute for his personal occupation ?

(4) Whether the building in dispute has become unfit and unsafe for human habitation ?.

5. According to the Rent Controller, the property was proved to be a residential building. Under issue No. 2, the Rent Controller observed that

according to the application, the conveyance deed was granted to Asa Nand in 1959, and at the time of transfer, Rs. 26.38 nP., by way of rent,

were lying in deposit with the Custodian. This amount was considered by the Controller to be a good payment towards the rent due by Chetu

Ram. The sum of Rs. 26.38 nP., was considered by the Controller to be the amount of rent for thirteen months and a couple of days. This amount

thus covered the rent upto October, 1956. By reference to Ex. R/3 a letter from the office of District Rent and Managing Officer, Chetu Ram tried

to prove that he had effected repairs costing Rs. 56-6-0. The Rent Controller, however, did not agree with this contention and came to the

conclusion that the amount of Rs. 56-6-0 had already been adjusted towards rent for the month of August, 1954. Chetu Ram, it appears, admitted

that after the repairs, he did not pay any rent to anybody. On this material, according to the Rent Controller, rent from 1st June, 1957 to 30th June,

1960, was duly deposited in Court with the result that there was no dispute about payment of rent for that period. In so far as arrears of rent from

1st November, 1956 to 31st May, 1957, are concerned, according to the Rent Controller, though this amount had become barred by time, it was

rent due"" within the contemplation of the Rent Restriction Act, and having not been paid or tendered on the first date of hearing, Chetu Ram was

held liable to be evicted on this ground. Issues Nos. 3 and 4 were both held against Asa Nand, but on the basis of the finding under issue No. 2,

an order of ejectment was passed against Chetu Ram.

6. The matter was taken on appeal to the Appellate Authority, before whom, on behalf of Chetu Ram, it was contended that in view of the

provisions of Section 29 of the Displaced Persons (Rehabilitation and Compensation) Act, 1954, the petition for eviction was premature and that it

was neither alleged nor proved that any notice, as contemplated by Sub-section (1) of the above section, had ever been served by the landlord

upon the tenant. This contention did not appeal to Shri R.S. Sarkaria, the Appellate Authority, who observed that the plea of the jurisdiction being

premature had ""only faintly been adumberated in the written statement,"" and that there was no plea that the requisite notice had never been served

upon the tenant. No objection to the jurisdiction of the Rent Controller having been taken in the proceedings for ejectment, and there being no

grounds of appeal even before the Appellate Authority with respect to the absence of jurisdiction by the Rent Controller the tenant was held to be

precluded by his own act from urging that the Rent Controller or the Appellate Authority had no jurisdiction to decide the case. Support for that

view was sought by the Appellate Authority from an Unreported decision of G. D. Khosla, C.3., in Rddha Kishan v. Piara Singh, Civil Revision

No. 652 of 1960, decided on 6th April, 1961 Following the ratio of the decision mentioned above, the Rent Controller thought that the tenant

having submitted to the jurisdiction of the Rent Controller without any objection, it was too late for him to raise the objection for the first time

during the arguments on appeal. Considering it to be purposeless to send the case back to the Rent Controller for determining the issue of the

proceedings, being premature, the appeal was dismissed and; the order of ejectment confirmed. It is in these circumstances that Chetu Ram has

come to this Court on revision.

7. Shri J. N. Seth, learned Counsel for Chetu Ram, has very strongly urged that the Appellate Authority is wholly wrong in refusing to entertain the

plea which went to the root of jurisdiction of the Rent Controller. As a matter of fact he has raised another new point in this Court and has sub-..

mitted that property transferred u/s 29. of the Displaced Persons (Compensation and Rehabilitation) Act is not governed by the provisions. of the

East Punjab Urban Rent Restriction Act. He has, in support of this contention, relied upon two decisions of this Court in Sardha Ram v. Paras

Ram. 1961 P.L.R. 716, and Sardha Ram v. Paras Ram 1961 P.L.R. 769.

8. On behalf of the Respondent, it has been submitted that two years from the date of transfer of the property in favour of the landlord having

expired, the protection granted by Section 29 of the Displaced Persons (C. & R.) Act had exhausted itself, and, therefore, the matter was

governed by the provisions of the Rent Restriction Act. According to the counsel, the date from which the period of two years as contemplated by

Section 29 began, was 1st of October, 1955 and not 23rd of November, 1959, the date of the deed of conveyance.

9. The counsel had, however, practically nothing to say in reply to the contention that a new point of law going to the root of the jurisdiction of the

Controller should have been allowed to be taken before the Appellate Authority.

10. Now it is well established that total or inherent lack of jurisdiction cannot be cured by consent or acquiscence and it is not open to litigants to

confer jurisdiction by consent or submission where it does not initially exist. To quote the words of Lord Watson used as far back as 1886 ""when

a Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual consent, convert it into a proper judicial

process, although they may constitute the Judge their arbiter, and be bound by his decision on the merits when these are submitted to him;

Ledgard, etc. v. Bull ILR 9 All. 191 at page 203. The Privy Council in this case pointed out the distinction between cases of want of inherent

jurisdiction and cases where the Judge is competent to try a cause and the parties without objection join the issue and go to trial upon the merits. In

the second category of cases, the Defendant may estop himself from subsequently disputing the Court''s power on the ground that there were

irregularities in the initial procedure which if objected to at that time would have led to the dismissal of the suit. The ratio of this case was followed

by a Division Bench (Tek Chand and Backett, JJ.) in Bhagwan Singh v. Barkat Ram AIR 1943 Lah. 129. The following quotation from this

judgment is worth reproducing:

Reference may also be made to Gurdeo Singh v. Chandrikah Singh and Chandrikah Singh ILR 36 Cal. 193, at page 207 where Mookerjee, J., in

an elaborate judgment has discussed the question at length and collected the other leading authorities. The learned Judge observed:-

The distinction between elements which are essential for the foundation of jurisdiction and the mode in which such jurisdiction has to be assumed

and exercised is of fundamental importance, but has not always been sufficiently recognised That the distinction is well-founded is manifest from

cases of the highest authority. Thus, in Henry Peter Pesani v. Attorney General for Gibraltar (1874) L.R. 5 P.C. 516, their Lordships of the

Judicial Committee held that, Where there is jurisdiction over the subject-matter but non-compliance with the procedure '' prescribed as essential

for the exercise of jurisdiction; the defect might be waived. The same principle was adopted in Ex parte Pratt (1884) 12 Q.B.D. 384, and Ex

''Parte May (1884) 12 Q.B.D. 497, which laid down that where jurisdiction over the subject-matter exists requiring, only to be invoked in the right

way, the party who has invited or allowed the Court to, exercise''it in a wrong way, cannot afterwards turn round and challenge the legality of the

proceedings ''due to his own invitation or negligence. To put the matter from another point of view, it is only when a Judge or Court has no

jurisdiction over the subject-matter of the proceedings or action ill Which an order is made or a judgment rendered that such order of juqjgj-ment

is wholly void, and that the-maxim applies that consent cannot give jurisdiction; mall other cases, this objection to the exercise of the jurisdiction

may be waived, and-is waived when not taken at the time, the exercise of the jurisdiction is first claimed.

11. To hold to the contrary would, in my view, be indefensible aberration and would lead to diversion from the correct legal path.

12. Another fundamental principle, which is well-established is that a decree passed by a Court without jurisdiction is a nullity and its invalidity can

be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and also in collateral proceedings; Kiran

Singh and Others Vs. Chaman Paswan and Others, An objection going to the root of the jurisdiction could, therefore, be taken notice of at any

stage. Indeed a Court may be ""bound to take notice of an objection to the jurisdiction, however late in the day it may be raised, if it be that on the

facts admitted or proved it is manifest that there is a defect of jurisdiction,"" Ram Lal Hargolal v. Kishan Chand ILR 51 Cal. 361 . Questions of law

arising out of admitted facts, by and large, have been allowed to be raised on appeals and revisions in quite a few cases, though of course, a party

may not be entitled as of right to raise them. In Alembic Chemical Works Co. Ltd. Vs. The Workmen, the Supreme Court allowed a point of law

to be raised for the first time on appeal. In Seth Badri Prasad and Others Vs. Seth Nagarmal and Others, also, an objection resting on a public

statute had been allowed to be raised for the first time in the Supreme Court. It is, therefore, obvious that the learned Appellate Authority has gone

grievously wrong in holding that the Appellant before it was precluded from raising the point which went to the root of the jurisdiction of the Rent

Controller. But then the Respondent has strongly relied on the single Bench decision in Radha Kishan''s case.

13. Now a judgment of a single Judge on a point of law, though technically not binding on another single Judge, is entitled to respect and should in

the interest of uniformity and certainty be followed. This practice seems to me to be dictated by principle of comity. In case, the correctness of the

law laid down by a single Judge is doubted by another Single Judge, the matter should unhesitatingly be referred to a larger Bench for an

authoritative decision, rather than conflicting decisions in the legal field are allowed to create confusion to the avoidable embarrassment of the

subordinate judiciary, the Bar and the litigant" public. Reference to a larger Bench, from this point of view, deserves to be considered favourably,

for, decisions by larger Benches only serve to add to the quality of certainty in law--a thing which has been described by the Supreme Court in

Mahadeolal Kanodia Vs. The Administrator-general of West Bengal, to be ""more necessary than any other thing."" There are, however,

circumstances in which a judgment of a Bench of co-ordinate or equal jurisdiction may not be followed. One of such circumstances is when the

legal proposition laid down in the earlier decision is in conflict with the law laid down by a higher or superior Court or by a larger Bench of the

same High Court. In such a situation, the more authoritative decision undoubtedly commands greater respect and priority, being binding on both

the Courts. Another exception has been described in some reported cases to be when a decision of a Court of co-ordinate jurisdiction determines

something per incuriam though I, for my part, would hesitate, as at present advised, to uphold this exception without reserve. With the utmost

respect to the learned Judges holding this view, in my humble opinion, it is far more desirable and in the fitness of things to refer the point to a larger

Bench to promote certainty and stability in law, for, this quality has an honoured place in our jurisprudence where rule of law (and not rule of men,

whether Administrators or Judges) prevails. Looking at the problem from this point of view, attempts to get decisions by more authoritative

Benches should always be welcomed. Of course, such a course need not be adopted when a decision by a larger Bench or by a Superior Court

exists and was perhaps by oversight or for some other reason ignored or hot noticed in the precedent cited.

14. It is also clear that a precedent is an authority on its own facts and it is permissible to refuse to actept a mere logical extension of a given

decision. The doctrine of precedents is not something to be developed by analogy, and, indeed, it scarcely constitutes an authoritative premise

from which to deduce grounds of decision. "It seems to me to, be merely a traditional technique of deciding a case with reference to judicial

decisions in the past:

15. It is in the background of what has just been stated that I must view and consider the effect of the Single Bench decision in Radha Kishan''s

case. To begin with there the person objecting to the jurisdiction of the Rent Controller had himself approached the Rent Controller; a

circumstance treated to be material and which weighed considerably with the Court in precluding him from arguing that the East Punjab Rent

Restriction Act was inapplicable to that case. In the proceedings before me, it is not the landlord who had approached the Rent Controller, but it is

the tenant-Defendant, who is questioning the jurisdiction of the Rent Controller invoked by the landlord. It is true that he also submitted to the

jurisdiction of the Rent Controller, but then to hold his case also to be governed by the reasoning and ratio decidendi of Radha Kishan''s case

would clearly mean going against the authoritative dicta of the Privy Council and of other Courts which are binding both on me and on the Single

Bench deciding Radha Kishan''s case. As a matter of fact, as I view things, where there is want of inherent jurisdiction, it may not make any real

difference whether the challenge to the jurisdiction emanates from the Plaintiff or the Defendant, for, in either case, it is the voluntary submission

and acquiescence which is sought to be utilised as"" a bar or estoppel, and this would seem to, be directly hit by the established rule stated earlier. It

is unfortunate that the attention of the Court deciding Radha Kishan''s case was not invited to the established rule of law as ""stated by the Privy

Council and adopted by other Courts whose dicta are not only entitled to respect but have also binding effect (and indeed, with which I also

respectfully agree). Had this rule of law been brought to the notice of the Court, one would have expected to find some reference to it in the''

judgment, for, it is not possible. to imagine that such a point, if canvassed, would have been ignored or left out of consideration by the learned

Chief Justice. I am, accordingly of the view that the decision in Radha Kishan''s case does not lay down a rule of law which applies to the case

before me and it constitutes no binding precedent for holding that the Petitioner in this Court is debarred or precluded from raising the question of

want of inherent jurisdiction of the Rent Controller.

16. The decisions in Sardha Ram''s case, namely 1961 P.L.R. 716 and 769 have been relied upon by the counsel for the Petitioner in his attack on

the jurisdiction of the Controller and the Appellate Authority, but in reply, no attempt has been made by the Respondent''s counsel to meet the

ratio of these cases. I would, however, set aside the order of the Appellate Authority on the short ground that it should have allowed the point of

jurisdiction to be raised and that its failure to do so was wrong and contrary to law.

17. Setting aside the order of the Appellate Authority, I send the case back to it for re-deciding the appeal according to law and in the light of the

observations made above. There would, however, be no costs in this Court. The parties should appear before the Appellate Authority on 11th

December, 1961, when another date would be given for further proceedings.