(1986) 02 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1485 of 1977

Smt. Sheela Devi		APPELLANT
	Vs	
Sohan Lal		RESPONDENT

Date of Decision: Feb. 20, 1986

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 3
- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 1, 1(3)

Citation: (1986) RCR(Rent) 77

Hon'ble Judges: D.V. Sehgal, J

Bench: Single Bench

Advocate: Hemant Gupta, for the Appellant; H.L. Sarin for Mr. Sukhdev Singh and Mr. A.S. Grewal, for the Respondent

Judgement

D.V. Sehgal, J.
This judgment will also dispose of Regular Second Appeals Nos. 1410, 1486, 1487 and 1624 of 1977 as the same question of law as involved in all these appeals.

2. The facts giving rise to the present regular second appeal are that the shop in dispute situate at old Faridabad, which was admittedly constructed by the Plaintiff-Appellant after 31-3-1962, was rented out by her to Sohan Lal Defendant-Respondent at a monthly rent of Rs. 20/- besides house-tax. He failed to pay the arrears of rent amounting to Rs. 160/- for a period of 8 months. She, therefore, terminated his tenancy through a notice dated 14-10-1974 sent by registered post and called upon him to deliver possession of the shop to her. When he did not comply with the notice, she filed the instant suit for his ejectment from the shop in dispute as also for the recovery of Rs. 160/- towards arrears of rent. The suit was partly decreed by the learned Sub Judge 1st Class, Ballabgarh, vide judgment and decree dated 6-5-1976. An appeal filed by the Defendant-Respondent before the learned Senior Sub Judge with enhanced Appellant powers, Gurgaon,

however, succeeded. The judgment and the decree of the learned trial Court were set aside and the suit of the plaintiif-Appellant was dismissed vide judgment and decree dated 28-5-1977. She has, thus, preferred the present regular second appeal.

3. It maybe stated at the outset that the question with regard to the recovery of arrears of rent is not the subject-matter of the present appeal. The sole question which has been agitated is whether the shop in dispute is governed by the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter called ''the Haryana Act), and as such the Civil Court had no jurisdiction to entertain the suit or to pass a decree for ejectment of the Respondent as held by the lower Appellate Court.

4. Before coming into force of the Haryana Act. the properties situate within the municipal areas or notified areas in the State of Haryana were governed by the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called ''the Punjab Act''). By virtue of notifications issued by the Government u/s 3 from time to time the newly constructed properties were exempted from the operation of the Punjab Act for a period of 5 years. However, Section 1(3) of the Haryana Act, inter alia, provided as under:-

1. Short title and extent,-

(1)..... .....

(2) ﷺ .... ﷺ

(3) Nothing in this Act shall apply to-

(i) any non-residential building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion ;

(ii) any non-residential building construction of which is completed after the 31st March, 1962 ;

(iii) any rented land let out on or after 31st March, 1962.

5. There is no doubt that by virtue of the aforesaid provision of Sub-section (3) of Section 1 of the Haryana Act a non residential building construction of which was completed after 31-3-1962 was not governed by its provisions and consequently the Civil Court had the jurisdiction to entertain the suit for ejectment of the tenant. The Legislature in its wisdom, however, realised that the provisions of Section 1(3) of the Act were operating harshly on the tenants of the buildings described therein and did not annure towards a beneficial social legislation. Therefore, the Haryana Urban (Control of Rent and Eviction) Amendment Ordinance No. 8 of 1977 published in the Haryana Government Gazette Extraordinary substituted Sub-section (3) of Section 1 of the Haryana Act by the following:-

(3) Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion.

6. The Haryana Urban (Control of Rent and Eviction) Amendment Act, 1978 (Haryana Act ''16 of 1978'') (hereinafter called the ''Amendment Act'') took the place of the Ordinance. Section 2 of the Amendment Act, which is relevant for this case is reproduced hereunder:-

2. Amendment of Section 1 of Haryana Act 11 of 1973,-

For Sub-section (3) of Section 1 of the Haryana Urban (Control of

Rent and Eviction) Act, 1973 (hereinafter referred to as the principal

Act), the following Sub-section shall be substituted and shall always be

deemed to have been substituted, namely,-

(3) Nothing in this Act shall apply to any building the construction of which is completed on or after the commencement of this Act for a period of ten years from the date of its completion.

7. The learned Counsel for the Appellant contended that the above amendment in Section 1(3) of the Haryana Act could not affect the proceedings in the suits which had already been institutad in the Civil Courts for ejectment of tenants in respect of non-residential buildings the construction of which was completed after 31-3-1962. He further proceeded to contend that in the case in hand the suit had in fact been decreed by the trial Court and an appeal of the Respondent was pending when the Ordinance to amend Section 1(3) of the Haryana Act was notified in the Haryana Government Gazette. He asserted that by no valid reason the amendment could completely obliterate the orginal provision of Section 1(3) of tht Haryana Act and thus the decree granted by the learned trial Courts ought to have been sustained and should not have been set aside on the basis of Section 1(3) substituted for the original provision by the Amendment Act. The matter is, in fact, not res-integra. It was examined in sufficient detail by R. N. Mittal, J. in Suresh Kumar v. Bhim Sain (1978) 80 P. L. R. 751. It was held that the words "shall always be deemed to have been substituted" occurring in Section 2 of the Amendment Act establish beyond any shadow of doubt that Sub-section (3) of Section 1 of the Haryana Act was substituted from the date of enforcement of the parent Act. The language of the section is clear and no other interpretation can be put to it. It was further held that according to the well established principles of law the hearing of an appeal under the procedural law of the country is in the nature of re-hearing and therefore in moulding the relief to be granted in appeal an appellate Court is entitled to take into account even facts and events which have come into existence since the decree appealed from was passed. In determining what ''justice'' does require, the Court is bound to consider any change, either in fact or in law, which has supervened since

the judgment was entered.

8. Mr. Hemant Gupta, the learned Counsel for the Appellant, however, contended that the provisions of Section 1(3) of the Haryana Act as substituted by the Amendment Act has been recently examined by the Supreme Court in Mohinder Kumar and Others Vs. State of Haryana and Another, and it has been observed therein that the said provision operates prospectively and becomes effective after its incorporation in the Haryana Act by the Amendment Act. On a close study of Mohinder Kumar''s case (supra), I find that the contention of the learned Counsel is not well placed. Their Lordships of the Supreme Court were in fact dealing with a contention raised on behalf of the tenants that the amendment takes away their vested right under the Haryana Act. After examining the provisions of Section 1(3) of the Haryana Act before and after coming into force of the Amendment Act, it was observed thus: -

The provision, as it originally stood prior to its amendment, might not have been constitutionally valid as the exemption sought to be granted was for an indefinite period. That does not necessarily imply that any vested right in any tenant was thereby created. The right claimed is the right to be governed by the Act prior to its amendment. It the Legislature had thought it fit to repeal the entire Act, could the tenant have claimed any such right. Obviously, they could not have, the question of acquiring any vested rights really does not arise. Even if it could be said that the tenants had acquired any right because of any invalidity of the earlier provision before amendment, it is always open to the Legislature to remove any defect to make it valid. It is well settled that if any provisions made by the Legislature is found bad and constitutionally invalid for some lacunae or otherwise such provision can always be validated by removing the defect or lacuna by passing a validating Act.

In fact, a provision similar to that as it existed is Section 1(3) before its amendment granting indefinite exemptions to buildings, construction of which was completed after 1-3-1962 existing in Section 32(b) of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act (15 of 1960), which exempted from its operation buildings constructed on and after 26-8-1957 came up for consideration before the Supreme Court in Motor General Traders v. State of Andhra Pradesh A. I. R. 1984 S C. 121, The same was held to be unconstitutional being violative of the principle of equity and it was inter-alia observed thus:-

Section 32(b) which exempts all buildings constructed or and after 26-8-1957 from the operation of the Act, is violative of Art 14, as the classification of buildings for purposes of Section 32(b) does not satisfy the true tests of a valid classification and the continuance of that provisions on the statute book will imply the creation of the privileged class of landlords without any rational basis as the incentive to build which provided a nexus for reasonable classification of such class of landlords no longer exists by lapse of time in the case of majority of such landlords.

In fact, the language of Section 2 of the Amendment Act reproduced above does not leave any scope for the argument that it is prospective in nature As held in Suresh Kumar''s case (supra), the amended provision of Section 1(3) of the Haryana Act is deemed to have taken the place of the original provision right from the date of coming into force of the Haryana Act. There is, thus, no force in the contentions raised by the learned Counsel.

9. Consequently, these appeals are dismissed with no order as to costs.

R.M.S. Appeals dismissed.