
Om Wati Gaur and Others Vs Jitendra Kumar and Others

Civil Appeal No. 516 of 1999

Court: Supreme Court of India

Date of Decision: Oct. 31, 2002

Acts Referred:

Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 " Section 14, 2(1)#Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 " Section 20(1), 20(2), 3(a), 39

Citation: (2002) 5 AWC 3483

Hon'ble Judges: S. N. Variava, J; R. C. Lahoti, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

S.N. Variava, J.

This appeal is against a judgment dated 30th July, 1998.

2. Briefly stated the facts are as follows:

The Appellants are the wife, son and daughter of one A. K. Gaur. The said A. K. Gaur was the tenant of the Respondents 1 and 2 (hereinafter

called landlords). The premises had been given on rent to the said A. K. Gaur at a monthly rent of Rs. 100. On 29th September, 1966, the

landlords sent a notice terminating the tenancy of A. K. Gaur with effect from the 31st day of the receipt of the notice. The tenancy was terminated

on the ground that the rent had not been regularly paid. By his letter in reply dated 6th October, 1966, A. K. Gaur claimed that the rent upto

September, 1966 had already been paid. The said A. K. Gaur claimed that the rent was only Rs. 80 per month as certain facilities had been

withdrawn.

3. The landlords then filed Suit No. 2385 of 1966 for eviction, for recovery of rent and for damages and mesne profits. A. K. Gaur filed an

application seeking permission to deposit the rent in the Court. This permission was granted by the Court. On 29th April, 1967, A. K. Gaur

deposited the rent due and payable for the period from 1st October, 1966 to 31st March, 1967. On 6th October, 1967, he deposited rent for the

period from 1st April, 1967 to 30th September, 1967. On 25th April, 1968, he deposited rent for the period from 1st October, 1967 to 31st

March, 1968. All these deposits were at the rate of Rs. 80 per month. The landlords then applied that they be allowed to withdraw the amounts

lying deposited in Court. A. K. Gaur opposed this application on the ground that the landlords could only withdraw provided they accepted that

Rs. 80 per month was the rent of the premises. The landlords, therefore, did not pursue their application and no order was passed thereon.

4. On 15th January, 1970, A.K. Gaur died. The Appellants were brought on record as his heirs. On 15th July, 1972 the U.P. Urban Buildings

(Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the said Act) was enacted. Sections 3(a) and 39 of the said Act

read as follows:

3. Definitions.-In this Act, unless the context otherwise requires:

(a) "tenant", in relation to a building, means a person by whom its rent is payable, and on the tenant's death:

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death ;

(2) in the case of a non-residential building, his heirs ;

39. Pending suits for eviction relating to buildings brought under regulation for the first time.-In any suit for eviction of a tenant from any building to

which the old Act did not apply, pending on the date of commencement of this Act, where the tenant within one month from such date of

commencement or from the date of his knowledge of the pendency of the suit, whichever be later, deposits in the Court before which the suit is

pending, the entire amount of rent and damages for use and occupation (such damages for use and occupation being calculated at the same rate as

rent) together with interest thereon at the rate of nine per cent per annum and the landlord's full cost of the suit, no decree for eviction shall be

passed except on any of the grounds mentioned in the proviso to Sub-section (1) or in Clauses (b) to (g) of Sub-section (2) of Section 20, and the

parties shall be entitled to make necessary amendment in their pleadings and to adduce additional evidence where necessary

Provided that a tenant the rent payable by whom does not exceed twenty-five rupees per month need not deposit any interest as aforesaid.

5. It is an admitted position that the old Act did not apply to the concerned premises. The Appellants made an application u/s 39 of the said Act

claiming that they had deposited all the rents and calling upon the landlords to confirm the same. The landlords filed a reply denying that all the rents

had been deposited. The landlords, however, did not set out what had not been deposited. The Court, therefore, called upon the landlords to

indicate what according to them had not been deposited. The landlords then gave particulars indicating that the deposits had only been made at the

rate of Rs. 80 per month, whilst the rent was Rs. 100 per month. They also indicated that there had been delay in deposits and that interest had not

been deposited in respect thereof. The landlords claimed that the Appellants had deposited Rs. 1,491 less and, therefore, were not entitled to the

benefit of Section 39. The landlords also claimed that as the tenancy of A. K. Gaur had been terminated, the Appellants were not entitled to the

benefit of Section 39.

6. On 12th August, 1980, the suit filed by the landlords was decreed. It was held that the rent for the premises was Rs. 100 per month. It was held

that there was a short deposit and that, therefore, the Appellants could not claim the benefit of Section 39. It was also held that the Appellants

were not the tenants under the said Act and, therefore, not entitled to the benefit of Section 39.

7. Civil Revision No. 128 of 1980, filed by the Appellants was allowed by a judgment dated 31st July, 1982. In this judgment, it has been held

that the Appellants were tenants within the meaning of the said Act. It was held that they had deposited all the amounts and were entitled to the

benefit of Section 39.

8. The landlords then filed Writ Petition No. 11858 of 1982 in the High Court of Allahabad. This writ petition came to be allowed by the

impugned judgment dated 30th July, 1998. It is held that rent, at the rate of Rs. 100 per month, had not been deposited and the entire amount of

the rent had not been deposited. It is held that the deposits at the rate of Rs. 80 per month were not made on time and interest for the delayed

periods had also not been deposited. The Court, therefore, set aside the order dated 31st July, 1982 and restored the decree of the trial court.

The question whether the Appellants could claim the benefit of Section 39 was not answered on the footing that even if the said Act applied, the

Appellants had not complied with the requirements of Section 39.

9. Mr. Sudhir Kumar Gupta, the learned Counsel for the tenant-Appellants has submitted that, according to the Appellants, the rent was Rs. 80

per month. He submitted that even prior to the coming into force of the said Act, the Appellants had deposited the rent in Court. He submitted that

at the time the said Act came into force, there were no arrears. He submitted that, as there were no arrears, no interest was payable. He pointed

out that after the said Act came into force, the Appellants had deposited the difference of Rs. 20 per month and interest thereon. He submitted

that, therefore, the Appellants have fully complied with Section 39 of the said Act.

10. Mr. Sudhir Kumar Gupta relied upon the definition of "tenant" u/s 3(a) of the said Act. He submitted that the heirs of the tenant were deemed

to be the tenants under the said Act.

11. Mr. Sudhir Kumar Gupta relied upon the case of Damadilal v. Parashram reported in [1976] 4 SCC 855 ,wherein it has been held as follows:

11. We find it difficult to appreciate how in this country we can proceed on the basis that a tenant whose contractual tenancy has determined but

who is protected against eviction by the statute, has no right of property but only a personal right to remain in occupation, without ascertaining what

his rights are under the statute. The concept of a statutory tenant having no estate or property in the premises which he occupies is derived from the

provisions of the English Rent Acts. But it is not clear how it can be assumed that the position is the same in this country without any reference to

the provisions of the relevant statute. Tenancy has its origin in contract. There is no dispute that a contractual tenant has an estate or property in the

subject-matter of the tenancy, and heritability is an incident of the tenancy. It cannot be assumed, however, that with the determination of the

tenancy the estate must necessarily disappear and the statute can only preserve his status of irremovability and not the estate he had in the premises

in his occupation. It is not possible to claim that the ""sanctity"" of contract cannot be touched by legislation. It is therefore, necessary to examine the

provisions of the Madhya Pradesh Accommodation Control Act, 1961 to find out whether the Respondents' predecessors-in-interest retained a

heritable interest in the disputed premises even after the termination of their tenancy.

12. Section 2(1) of the Madhya Pradesh Accommodation Control Act, 1961, defines "tenant" to mean, unless the context otherwise requires a

person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract express or implied, would be payable for

any accommodation and includes any person occupying the accommodation as a sub-tenant and also any person continuing in possession after the

termination of his tenancy whether before or after the commencement of this Act ; but shall not include any person against whom any order or

decree for eviction has been made.

The definition makes a person continuing in possession after the determination of his tenancy a tenant unless a decree or order for eviction has been

made against him, thus putting him on par with a person whose contractual tenancy still subsists. The incidents of such tenancy and a contractual

tenancy must therefore, be the same unless any provision of the Act conveyed a contrary intention. That under this Act such a tenant retains an

interest in the premises, not merely a personal right of occupation, will also appear from Section 14 which contains provisions restricting the

tenant's power of subletting. Section 14 is in these terms:

Section 14. Restrictions on subletting.-

(1) No tenant shall, without the previous consent in writing of the landlord:

(a) sublet the whole or any part of the accommodation held by him as a tenant ; or

(b) transfer or assign his rights in the tenancy or in any part thereof.

(2) No landlord shall claim or receive the payment of any sum as premium or puggree or claim or receive any consideration whatsoever in cash or

in kind for giving his consent to the sub-letting of the whole or any part of the accommodation held by the tenant.

There is nothing to suggest that this section does not apply to all tenants as defined in Section 2(i). A contractual tenant has an estate or interest in

premises from which he carves out what he gives to the sub-tenant. Section 14 read with Section 2(i) makes it clear that the so-called statutory

tenant has the right to sublet in common with a contractual tenant and this is because he also has an interest in the premises occupied by him.

Considering the position of the sub-tenant of a statutory tenant in England Lord Denning said in *Solomon v. Orwell* (1954) 1 All ER 874:

When a statutory tenant sublets a part of the premises, he does not thereby confer any estate or interest on the sub-tenant. A statutory tenant has

no estate or interest himself, and he cannot carve something out of nothing. The sub-tenant, like the statutory tenant, has only a personal right or

privilege.

In England the statutory tenant's right to sublet is derived from specific provisions of the Acts conceding this right to him, in the Act we are

concerned with in this appeal, the right flowing from his status as a tenant. This is the basic difference between the English Rent Restrictions Acts

and the Act under consideration and similar other Indian statutes. In a Special Bench decision of the Calcutta High Court, *Krishna Prosad Bose v.*

Smt. Sarajubala Dasi 65 Cal WN 293 *Bachawat, J.*, considering the question whether a statutory tenant continuing in occupation by virtue of the

West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, could sublet the premises let to him, said:

The Rent Control and Tenancy Acts create a special world of their own. They speak of life after death. The statutory tenancy arises phoenix-like

out of the ashes of the contractual tenancy. The contractual tenant may die but the statutory tenant may live long thereafter. The statutory tenant is

an ex-tenant and yet he is a tenant.

The concept of statutory tenancy under the English Rent Acts and under the Indian statutes like the one we are concerned with in this appeal rests

on different foundations. It must therefore, be held that the predecessors-in-interest of the present Respondents had a heritable interest in the

premises and consequently the Respondents had the right to prosecute the appeal in the High Court. Mr. Gupta's first submission thus fails.

12. He also relied upon the judgment in the case of *Mam Chand Pal v. Shanti Agarwal* (Smt.) reported in [2002] 3 SCC 49. In this case, it has

been held that a very rigid or technical view should not be taken in respect of deposit of rent. It has been held that if the tenant has substantially

complied with the provisions then the benefit of the statute should be given to the tenant. Mr. Sudhir Kumar Gupta submitted that the Rent Control

Act was a beneficial legislation and therefore, it must be liberally interpreted in favour of the tenant.

13. On the other hand, Mr. Upadhaya, the learned Counsel for the landlord-Respondents submitted that the Appellants were not the tenants. He

submitted that the tenancy of A. K. Gaur had been terminated by a notice dated 29th September, 1966. He submitted that thereafter Shri A. K.

Gaur was not a tenant. He submitted that at the time when the said Act came into force Shri A. K. Gaur would not have been a tenant as no rent

was payable by him. He submitted that therefore, the Appellants also would not be tenants. He relied on the cases of Anand Nivas Private Ltd. v.

Anandji Kalyanji Pedhi and Ors. (1964) 4 SCR 852; and Jagdish Chander Chatterjee v. Sri Kishan, (1972) 2 SCR 461. In both these cases it has

been held that a person in occupation after termination of tenancy has no estate or interest in the premises occupied by him.

14. We are unable to accept this submission of Mr. Upadhaya. In Jagdish Chander's case, the ratio laid down in Anand Nivas's case was

approved. In Damadilal's case (supra), both these decisions have been considered and the principles laid down therein have been disapproved.

Damadilal's case lays down that the provisions of the concerned statute have to be looked at in order to ascertain what are the rights available

under the statute. The definition of a "tenant" as contained in Section 3(a) of the said Act includes the heirs and legal representatives residing with

the tenant at the time of his death. Admittedly, the Appellants were residing with A. K. Gaur at the time of his death. On the coming into force of

the new Act, even though the tenancy had been terminated, rent was payable on behalf of Sri A. K. Gaur and, therefore, he would have been a

tenant. On his death, the Appellants who were residing with him at the time of his death would be tenants.

15. Mr. Upadhaya then submitted that the High Court was right in concluding that even if Section 39 applied, the Appellants had not deposited the

entire amount of the rent and interest. He pointed out that the trial court had fixed the rent at Rs. 100 per month. He submitted that the Appellants

took a risk in depositing rent by calculating it at the rate of only Rs. 80 per month. He submitted that once the trial court fixed the rent at Rs. 100

per month there was shortfall in deposit and thus the Appellants could not be said to have deposited the entire amount of rent. He submitted that

even otherwise, the interest had been paid only on the difference of Rs. 20, even though the deposits at rate of Rs. 80 per month were not on time.

He submitted that, therefore, the High Court was right in confirming the decree of eviction passed by the trial court.

16. We find that the deposits of rent at the rate of Rs. 80 per month were not on time. The first deposit was on 29th April, 1967 (for the period

from 1st October, 1966 to 31st March, 1967). Thus, from October, 1966 to March, 1967, there had been no deposits. Interest would have been

payable on this delayed payment. Admittedly, this interest amount had not been deposited. The second deposit was only on 6th October, 1967

(for the period from 1st April, 1967 to 30th September, 1967). Even here no interest had been deposited for the delayed payments. The third

deposit is on 25th April, 1968 (for the period from 1st October, 1967 to 31st March, 1968). Here again interest had not been deposited for the

delayed payments. More importantly, the Appellants chose to deposit at the rate of Rs. 80 per month when the actual rent was Rs. 100 per month.

By choosing to deposit at the rate of Rs. 80 per month, they took a risk that if the Court did not accept their contentions, there would be no full

deposit. The trial court in its decree dated 12th August, 1980, held that the rent was Rs. 100 per month. This portion of the decree has not been

challenged. Once it was held that the rent was Rs. 100 there was no deposit of the full rent within one month of the coming into force of the said

Act as envisaged by Section 39. Thus, on this ground, the High Court was right in confirming the decree for eviction.

17. We, therefore, see no reason to interfere. The appeal stands dismissed with no order as to costs.

18. Mr. Sudhir Kumar Gupta applies for time to enable his clients to vacate. We grant time of 4 months from today for the Appellants to vacate

the premises on their filing in this Court within 3 weeks from today the usual undertaking.