

STATE OF UTTAR PRADESH & ANR.

v.

ANAND SWARUP

November 6, 1973

[P. JAGANMOHAN REDDY, S. N. DWIVEDI AND P. K. GOSWAMI, JJ.]

U.P. Government Premises (Rent Recovery & Eviction) Act, 1952 Ss. 4, 6 and 12—Whether the Act applicable to a case where letting had been done prior to the passing of the Act—Practice and Procedure—Whether grounds raised before the High Court but rejected or even not considered by it could be re-considered in the Supreme Court.

The District Magistrate, Ghaziabad (defendant-appellant) issued a notice to the plaintiff (respondent) under s. 3 of the U.P. Government Premises (Rent Recovery and Eviction) Act, 1952 calling upon him to vacate the Government premises which he said were under the plaintiff's unauthorised occupation. By another notice issued under s. 12 of the Act he assessed the plaintiff to damages. The plaintiff filed a suit praying for a permanent injunction against the defendant restraining him from recovering the amount and from threatening to evict him from the premises. The defendants contested the suit on the ground, among others, that the premises had been requisitioned under the Defence of India Rules in 1946 and derequisitioned in 1955 and during the above period of requisition the plaintiff remained in possession of the suit premises without any valid allotment order under the Act. The plaintiff was, therefore, assessed on account of his unauthorised use and occupation during the period of requisition. The trial court decreed the suit and granted the relief of permanent injunction against the defendant.

Before the High Court the defendants submitted that the suit premises being "Government premises" within the meaning of the Act, the suit was barred under s. 15 of the Act. There was dispute between the parties with regard to the factum of requisition of the premises. Without dealing with this point the High Court dismissed the appeal relying upon its earlier decision in *Shri Sripat Rai v. District Magistrate, Banaras* and held that the Act could not be made applicable to a case where the letting had been done prior to the passing of the Act, and that since the plaintiff came into possession of the premises before the date of passing of the Act, State action under the Act was invalid and s. 15 was no bar to the suit. The correctness of this decision was questioned before this Court.

Dismissing the appeal.

HELD: (i) The conclusion of the High Court that the Act was not applicable to a case where letting had been done or requisition had been made or unauthorised occupation had commenced prior to the passing of the Act clearly runs counter to the scheme and purpose of the Act. A time barred claim for arrears of rent might not be recoverable under ss. 4 & 6 but an arrear of rent for the recovery of which the period of limitation had not expired would be recoverable and could be recovered by the procedure provided for under ss. 4 and 6. The second condition is that the rent due should be on account of 'occupation of Government premises'. Whenever these two conditions are satisfied it would be permissible under Ss. 4 & 6 to recover the arrears of rent even though in particular cases the premises might have been let before the commencement of the Act. Before the commencement of the Act suit was the only remedy for recovering the arrears of rent. But the Act gave another remedy for recovering the arrears of rent to the Government. There is neither vested right nor a vested liability in any procedure. The tenant or a trespasser of the Government premises had no vested right in the suit procedure. The words "is in unauthorised occupation of any Government premises" in s. 12 show that the procedure provided for in that section might be pursued for recovering damages for unauthorised occupation where a trespasser was in occupation of any Government premises. So, even though the plaintiff had occupied the premises before the

A commencement of the Act it would be open to the Government to pursue the remedy provided for in s. 12 provided the premises were "government premises". [192A-H]

View *contra* in *Shri Sripat Rai v. The District Magistrate, Banaras* [1955] A.L.J. 681, held incorrect.

B (ii) No valid order of requisition under r. 81(2)(bb) of Defence of India Rules could be passed by the Dist. Magistrate nor was any notification containing the order of requisition under r. 75A produced before the High Court or this Court. Besides, the power of requisition under r. 75A was conferred upon the Government and there was no delegation of this power by the Government under s. 2(5) of the Defence of India Act in favour of the District Magistrate. On the material on record it was not possible to say that the premises in suit were requisitioned property and "Government premises" within the meaning of s. 2 (c) of the Act. [193D-F]

C (iii) It is well settled that a party could support a decree on grounds raised by him and decided against him by the courts below on the analogy of the provisions of O.41, r. 22, C.P.C. and recanvass the point here to support the decree of the High Court on grounds rejected by it or even not considered by it. The only limitation in this behalf was that the party, by relying upon such a ground, could not be allowed to mutilate or destroy the decree. [193H; 194A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1389 of 1967.

D Appeal by special leave from the judgment and order dated the 28th October, 1966 of the Allahabad High Court in Second Appeal No. 993 of 1960.

G. N. Dikshit and *O. P. Rana*, for the appellants.

P. D. Bhargava, *Pramod Swarup*, *S. S. Khanduja* and *Sheila Sethi*, for the respondent.

E The Judgment of the Court was delivered by

GOSWAMI, J. This appeal by special leave at the instance of the State of Uttar Pradesh and the District Magistrate, Meerut (briefly the defendants) is directed against the judgment of the Allahabad High Court in Second Appeal No. 993 of 1960 whereby the High Court dismissed the same. The material facts are briefly as follows :

F The sole respondent (hereinafter described as the plaintiff) instituted suit No. 678 of 1956 on July 16, 1956, praying for a permanent injunction against the defendants restraining them from recovering certain amount and from threatening to evict him from the 3/8th portion of the premises in suit in his occupation situated in Wright Gunj, Ghaziabad. The plaintiff describes himself as a duly allotted tenant of the portion of the house on a monthly rental of Rs. 4/4 for some time.

G He had offered the said rent, but neither the Government nor the owner of the premises accepted the same. When subsequently the District Magistrate wanted to eject him from the house, the plaintiff, by some arrangement, became the direct tenant of the landlord. The District Magistrate by a notice dated April 21, 1955, as stated therein, cancelled the allotment order "under which the plaintiff was holding

H the 3/8th portion of the house No. 36" and notified the plaintiff that he 'shall be deemed to be in unauthorised occupation of the Government premises under section 3 of the U.P. Government Premises (Rent Recovery and Eviction) Act 1952", (briefly the Act). Another notice

was also sent to the plaintiff by the District Magistrate on October 14, 1955, calling upon him to vacate the said premises within thirty days of service of the notice failing which he would be liable to be forcibly evicted therefrom. A notice was also sent by the District Magistrate to the plaintiff under section 12 of the Act on April 24, 1957, supersession of his earlier notice of November 24, 1956, assessing this time Rs. 1522/10/9 as damages at the rate of Rs. 21/6/6 per month for the unauthorised occupation of the premises from December 15, 1949 to November 21, 1955, inclusive of notice fee and interest to be realisable as arrears of Land Revenue under the Act. After serving a notice under section 80 of the Civil Procedure Code on April 13, 1956, the present suit was instituted by the plaintiff in the Court of the Munsif, Ghazibad. The defendants contested the suit on various grounds. Inter alia, according to them, the premises had been requisitioned under the Defence of India Rules on July 26, 1946 and were derequisitioned on November 21, 1955. During the above period of requisition the plaintiff remained in possession of the suit premises from December 15, 1949 to November 21, 1955 without any valid allotment order under the Act. The amount was, therefore, assessed by the District Magistrate, who is the competent authority under the Act, on account of the plaintiff's unauthorised use and occupation during the period and the same could be recovered as arrears of Land Revenue under section 12(2) of the Act. It is not necessary to advert to the other pleas of the defendants for the purpose of this appeal. The trial court decreed the suit allowing the relief of permanent injunction against the defendants from proceeding against the plaintiff under the Act for recovery of the amount as arrears of Land Revenue. The other reliefs claimed by the plaintiff were, however, refused. The defendants' appeal to the Second Civil Judge, Meerut, was dismissed. That led to the Second Appeal to the High Court which met with the same fate. Hence this appeal by special leave.

Before the High Court the appellants submitted that the premises in suit being "Government Premises" within the meaning of section 2(c) of the Act, the suit was barred under section 15 of the Act. There was dispute between the parties in the High Court with regard to the factum of requisition of the premises under the Defence of India Rules, 1939. The High Court, however, did not deal with this point as it contented itself by relying upon a decision of the same court reported in *Shri Sripat Rai v. The District Magistrate, Banaras*(¹) and held that "the Act cannot be made applicable to a case where the letting had been done prior to the passing of this Act." Since, according to the High Court, the plaintiff came into possession by virtue of an allotment order before the date of the passing of the Act, the State action under the Act was invalid and section 15 was no bar to the suit. This decision in our view cannot be sustained.

Section 2(c) of the original Act defines Government premises as follows :—

"Government premises means any premises belonging to, taken on lease or requisitioned by the State Government".

(1) (1955) A.L.J. 681.

A It is not necessary for this case to note the definition substituted in 1956.

The learned counsel for the appellants points out that the U.P. Government Premises (Rent Recovery and Eviction) Act, 1952, came into force on December 19, 1952 and the claim of the defendants for compensation involved in this suit is for a period between December 15, 1949 and November 21, 1955. It may be appropriate here to quote the High Court's view in its own words :

"This Act cannot be made applicable to a case where the letting had been done prior to the passing of this Act. Admittedly the plaintiff came into possession by virtue of an allotment order before the date of the passing of this Act. So this Act cannot be held to be applicable to this case".

C The preamble of the Act shows that it is enacted "to provide for collection of rents from persons in occupation of Government premises and for eviction from such premises of persons continuing to occupy the same without authority". From the statement of objects and reasons, it appears "the bill has been drafted with the object of making available to Government, in place of the existing lengthy procedure of a law suit, a summary procedure to enable them (1) to realise arrears of rent as arrears of Land Revenue from persons occupying buildings owned, rented or requisitioned by the State Government and (2) to evict from such accommodation unauthorised persons or those who refuse to pay or hold back rent therefor". Section 2(f) defines that "rent shall have the meaning assigned to it in the Transfer of Property Act, 1882 and includes the amounts payable by any allottee for use and occupation of premises". Under section 2(h), "words and expressions used but not defined in this Act shall have the meanings assigned to them in the Transfer of Property Act, 1882".

As already noted Government premises means, inter alia, any premises requisitioned by the State Government.

F If the High Court is right, it will not be possible for the Government to recover arrears of rent or compensation in respect of buildings requisitioned by it before the enforcement of the Act. It is obvious that throughout the country a very large number of premises were requisitioned by the Government under the Defence of India Rules, 1939. The definition of Government premises will include such requisitioned property. Yet, if the High Court is right, this Act will not be available to the Government to recover arrears of rent for the premises or to recover damages for unauthorised occupation of such premises respectively under sections 6 and 12 of the Act. The Act provides for a summary procedure of recovery of rent and of damages. Under section 14 of the Act "except as otherwise provided in this Act or in any other law, no order made in exercise of any power conferred by or under this Act shall be called in question in any Court". By section 16 "the provisions of this Act shall have effect notwithstanding anything contained in any other law or in any instrument having effect by virtue of any other law". The conclusion of the High Court that the Act is

not applicable to a case where letting had been done or requisition had been made or unauthorised occupation had commenced prior to the passing of the Act, clearly runs counter to the scheme and purpose of the Act. Rent will include arrears of rent. Rent is payable by agreement in advance as well as when due. Again, rent not paid when due is said to be in arrears. Sections 4 and 6 of the Act provide for the procedure for recovering the arrears of rent. Section 4 provides that where an arrear of rent "is payable" by any person "for occupation of government premises", the competent authority may, "at any time after 30 days from the date on which rent accrued due, serve upon the persons liable a notice of demand for the amount due". Section 6 provides that if the said amount is not paid to the competent authority within 30 days from the date of service of the notice of demand or such extended period as the competent authority may allow, the arrear shall be recoverable as arrears of land revenue. The words "is payable" indicate that the liability to pay the arrears of rent should be outstanding on the date of the issue of demand. So a time-barred claim for arrears of rent may not be recoverable under sections 4 and 6. But an arrear of rent, for the recovery of which the period of limitation has not expired, will be an arrear which "is payable". Accordingly it can be recovered by the procedure provided for under sections 4 and 6. This is the first condition. The second condition for the application of sections 4 and 6 is that the rent due should be on account of "occupation of government premises". Whenever these two conditions are satisfied, it will be permissible under sections 4 and 6 to recover the arrears of rent even though in a particular case the premises might have been let before the commencement of the Act. Before the commencement of the Act, suit was the only remedy for recovering the arrears of rent. But the Act gives another remedy for recovering arrears of rent to the Government. There is neither a vested right nor a vested liability in any procedure. The tenant or a trespasser of the government premises has no vested right in the suit procedure. Section 12 provides for a similar procedure for recovering damages from an unauthorised occupier of the government premises. The words "is in unauthorised occupation of any government premises" in section 12 are important. They show that the procedure provided for in that section may be pursued for recovering damages for unauthorised occupation where a trespasser is in occupation of any government premises. In the present case we are concerned with section 12. The considerations which have persuaded us to hold that the Government can recover the arrears of rent under sections 4 and 6, even though the letting has been done before the commencement of the Act, equally govern section 12. So even though the respondent has occupied the premises before the commencement of the Act, it will be open to the Government to pursue the remedy provided for in section 12 provided the premises are "Government premises". The object of the Act will be considerably defeated if the Government is unable to recover arrears of rent or damages on the sole ground that the defaulter or the trespasser is in occupation of a building which has been let out or occupied prior to the passing of the Act. We are, therefore, unable to hold that the High Court's conclusion that the Act is not applicable to cases

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A where letting had been done prior to the passing of the Act, is correct. To that extent the view of the Allahabad High Court in *Sripat Rai's* case (supra) is also not correct.

B We should observe that we are not called upon in this case to consider whether the Act is ultra vires or invalid on any score and also note in passing that the Act has been amended in 1970 by insertion of a new section 15A (U.P. Act No. 30 of 1970) introducing a barring provision of a normal procedure of recovery of rent or of damages and also of eviction through civil court.

C Now in this case what has to be considered is whether these premises were requisitioned by the Government and, if by the District Magistrate, whether they were requisitioned by him in exercise of powers validly delegated to him by the Government. The learned counsel for the appellant was conscious of his difficulty in facing a question from the court with regard to the existence of the requisition order in this case under Rule 75A of the Defence of India Rules. No notification containing the order of requisition of the premises under Rule 75A had been produced before the High Court nor before us, notwithstanding opportunity offered by the Court here. With regard to the order of the so called requisition passed by the District Magistrate under rule 81(2)(bb), it is sufficient to state that no valid order of requisition of the premises could be passed under the sub-rule. Besides the power of requisition under Rule 75A is conferred upon the Government and there is no delegation of this power by the Government under section 2(5) of the Defence of India Act in this case in favour of the District Magistrate. The only order of delegation that was produced was that of power under rule 81(a)(bb). On the materials on record it is not possible to say that the premises in suit were requisitioned property and 'Government premises' within the meaning of section 2(c) of the Act. Accordingly the Act does not apply and the defendants are not entitled to recover the amount claimed as arrears of Land Revenue under the Act.

G The learned counsel for the appellants faintly argues that the respondent cannot agitate the matter as to whether the premises in suit are Government premises as that point had not been taken before the courts below. This is not correct. The point was raised in the High Court. But the High Court did not decide the point. It is well settled by several decisions of this Court that the respondent can support the decree on grounds raised by him and decided against him by the courts below on the analogy of the provisions of order 41, rule:

22, Civil Procedure Code. The respondent, therefore, is entitled to recanvass the point here to support the decree of the High Court on ground rejected by it or even not considered by it. The only limitation in that behalf is that the respondent by relying upon such a ground cannot be allowed to mutilate or destroy the decree. Short of that, within the ambit of the law, he can support the decree on any ground available to him. The objection of the learned counsel for the appellants is, therefore, of no avail.

In the result the appeal fails and is dismissed. The parties will bear their own costs in this Court.

P.B.R.

Appeal dismissed.