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YUDHISHTER

v.

ASHOK KUMAR

DECEMBER 11, 1986

B [SABYASACHI MUKHARJI AND K.N. SINGH, JJ.]

Haryana Urban (Control of Rent and Eviction) Act, 1973, s. 13(3)(a)(i) and 15(4)—Application for ejectment—Bonafide requirement of building by landlord—Jurisdiction of appellate authority to admit additional evidence.

C *Statutory interpretation—Rent Act—A beneficial legislation—Whether it should be read reasonably and justly.*

On 11th October 1971, the respondent-landlord purchased a house in which the appellant was a tenant since 1962. He had also purchased another house in the same district on 10.7.1971 but sold away the same on 7.8.72 as it D **was not vacant. On 14th January, 1974, the respondent-landlord filed an eviction petition against the appellant-tenant *inter alia* on the ground of bona fide personal requirement. The Rent Controller rejected the petition holding that all the ingredients of s.13(3)(a)(i) of the Haryana Urban (Control of Rent and Eviction) Act 1973 had not been proved.**

E **Aggrieved by the order of the Rent Controller, the respondent filed an appeal before the Appellate Authority alongwith an application for adducing additional evidence. The Appellate Authority allowed the said application, recorded the additional evidence and allowed the appeal, holding that: (i) the need of the respondent was bona fide; (ii) that the vacant possession of the house purchased on the 10th July 1971 by the respondent-landlord had not** F **been obtained; and (iii) that the sale of the aforesaid house by the respondent was not a benami transaction. The High Court dismissed the revision petition of the appellant *in limine*.**

Dismissing the appeal by the appellant to this Court,

G **HELD: 1.1 Section 15 of the Act deals with the powers of the appellate and revisional authorities under the Act. Sub-s. (4) of the said section specifically provides that, if necessary, after further enquiry as it thinks fit either personally or through the Controller, the appellate authority shall decide the appeal. Therefore, the appellate authority has by express provision jurisdiction to admit additional evidence. [520E]**

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State of Kerala v. *K.M. Charia Abdullah & Co.*, [1965] 1 S.C.R. 601, relied upon. A

1.2 The document relied upon on behalf of the appellant was a registered document and recited that vacant possession has been given. The document stated *'Kabza Khali makan ka dia hai'*. It was asserted that it meant that a vacant possession, in fact, had been given. The oral evidence adduced on B behalf of the respondent indicated otherwise. The expression indicated above does not mean that actual physical vacant possession has been handed over to the purchaser. In a document of this type it can equally mean that the legal right of the possession not the actual possession has been handed over to the purchaser. Therefore, evidence was persmissible to explain what it meant, and there was ample justification on the evidence on record to come to the C conclusion that it was 'not physically vacant'. [524F — 525A]

In the instant case, admission of additional evidence was warranted by the facts and the pleadings. By such admission of evidence, no prejudice has been caused to the appellant. Indeed reading of the order of the appellate authority makes it abundantly clear that the appellate authority had adverted D to all the facts recorded by the Rent Controller and further considered the additional evidence. It is true that in referring to the findings of the Rent Controller, the appellate authority in its order had not specifically referred to the paragraphs of the order of the Rent Controller but that does not mean nor does it indicate that the appellate authority had not considered evidence adduced before the Rent Controller. The criticism that there was no E consideration of the evidence adduced by the appellant before the Rent Controller by the appellate authority is, therefore, not justified in the facts and circumstances of the case. [521B — E]

2. Though the Rent Act is a beneficial legislation, it must be read reasonably and justly. If more limitations are imposed upon the right to hold F the property then it would expose itself to the vice of unconstitutionality. Such an approach in interpretation of beneficial statutes is not warranted. It is true that one should iron out the creases and should take a creative approach as to what was intended by a particular provision but there is always, unless rebutted, a presumption as to constitutionality and the Act should be so read as to prevent it from being exposed to the vice of unconstitutonality. [525F — G] G

In the instant case, the suit for eviction for the need of the landlord was filed in January, 1972. The respondent could not therefore be said, in view of the above premises having been purchased and sold prior to the institution of the suit, to have occupied another residential building in the urban area. The H

A **contention on behalf of the appellant, that the sale has disentitled the respondent to the relief asked for because he had in his choice the residential building for his occupation but he sold it, is not maintainable. There was no evidence either before the Rent Controller or before the appellate authority that this sale of property was with the intention or with a purpose to defeat the claim of the appellant or to take out the respondent from the purview of the** B **limitation imposed by clause (1)(a) of sub-s.(3) of s.13 of the Act. As the respondent had sold the property 1-1/2 years before his suit for his need was instituted, it cannot be said unless there was definite evidence that it was done with the intention to defeat the appellant's claim. The appellate authority accepted the respondent's need and found him within the purview of the Act. The High Court did not interfere in revision, nor shall this Court under Article** C **136 of the Constitution. [525D — F, 526C — F]**

Rani Sartaj Kuari and Another **v.** *Rani Deoraj Kuari,* **15 Indian Appeals, 51 in-applicable.**

State Bank of India **v.** *Ghamandi Ram (Dead) Through Shri Gurbax* D *Rai,* **[1969] 3 SCR 681;** *Sundarsanam Maistri* **v.** *Narasimbhulu Maistri* **and** *Anr.,* **ILR 25 Mad. 149, 154;** *Commissioner of Wealth Tax, Kanpur & Others* **v.** *Chander Sen and Others,* **[1986] 3 SCC 567;** *Lachhman Das* **v.** *Rent Control and Eviction Officer, Bareilly and another* **AIR 1953 Allahabad 458 at 459, paragraph 6;** *K.P. Varghese* **v.** *I.T.O., Ernakulam and Another* **[1981] 4 SCC 173 at 179-180 &** *Kasturi Lal Lakshmi Reddy* **v.** *State of Jammu and* E *Kashmir & Another* **[1980] 3 SCR 1338 at 1357 referred to:**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 459 of 1980.

From the Judgment and Order dated 10.1.1980 of the Punjab and Haryana High Court in C.R. No. 34 of 1980

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P.K. Banerji, V.C. Mahajan, Mrs. Urmila Kapoor and Ms. A. Prabhawathy for the Appellant.

Raja Ram Agarwal, B.P. Maheshwari, S. N. Agarwal and B.S. Gupta for the Respondent.

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The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This appeal by special leave is from the decision of the Punjab & Haryana High Court dated 10th Janaury, 1980. The appellant is the tenant. The appeal arises out of the summary dismissal of H the revision petition filed by the tenant under section 151 of the Code of Civil

Procedure from the decision of the appellate authority under the Haryana Urban (Control of Rent and Eviction) Act, 1973 being Act No. 11 of 1973 (hereinafter referred to as the 'Act'). A

The appellant took on rent the premises in question from the previous landlord in or about July, 1962. On or about 11th October, 1971, the respondent purchased the premises in question being suit No. 292 of Ward No. 13, District Gurgaon from the previous landlord. The premises hereinafter will be referred as the 'premises'. B

Few months prior thereto that is to say on 10th July, 1971, the respondent had purchased another house near Kabir Bhavan, Gurgaon. The appellant's case was that the respondent got vacant possession of the same. The respondent, however, denied that assertion. On 7th August, 1972 the respondent sold the said house near Kabir Bhavan. It is asserted that the sale was to one Resham Devi who is alleged to be the sister-in-law of the respondent. On the other hand this is disputed and it appears that she is the sister-in-law of the brother of the respondent. The assertion of the appellant was that this was a benami transaction. On 14th January, 1974, an application for ejectment was filed before the Rent Controller by the respondent on grounds of (a) non-payment of rent, (b) sub-letting, and (c) bona fide requirement. So far as the grounds of non-payment of rent and sub-letting, are concerned, it has been held by all the courts in favour of the tenant. Those findings are not in dispute in this appeal. The only ground that survives is the bona fide requirement of the landlord. The Rent Controller on 7th November, 1978 rejected the petition of the landlord on the ground that the landlord had not been able to prove all the ingredients of section 13(3)(a)(i) of the Act. The respondent thereafter filed an appeal before the Appellate Authority. Before the Authority, an, application was made for admission of additional evidence by the respondent/landlord. Such additional evidence were permitted to be adduced and were recorded on various dates. The appeal was allowed by the appellate authority on 7th December, 1979. The appellant herein filed a revision petition as mentioned hereinbefore before the High Court under section 151 of the Code of Civil Procedure, and the same was dismissed by the High Court in limine on 10th January, 1980. C D E F

The only question that requires consideration in this appeal, is whether on the facts and in the circumstances of the case, the landlord came within the provisions of section 13(3)(a)(i) of the Act. The Act which is an Act to control the increase of rent of certain buildings and rented land situated within the limits of urban areas, and the eviction of tenants therefrom, provides by section 13(1) that a tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of the said G H

A section. Sub-section (3)(a)(i) of section 13 provides as follows:

> "(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession—
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> (a) in the case of a residential building, if—
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> B
>
> (i) he requires it for his own occupation, is not occupying another residential building in the urban area concerned and has not vacated such building without sufficient cause after the commencement of the 1949 Act in the said urban area."

C Before we deal with the other contentions, it may be mentioned that on behalf of the appellant, Shri P.K. Banerji learned advocate contended that the appellate authority was in error in firstly admitting additional evidence at the appellate stage in the facts and circumstances of the case, and secondly, the appellate authority had not considered the evidence adduced by the appellant before the Rent Controller. We are unable to accept these submissions urged on D behalf of the appellant. The appellate authority, it must be mentioned, has normally the same jurisdiction to admit additional evidence as the trial court if the facts and circumstances so warrant.

Furthermore, in the instant case section 15 of the Act deals with the powers of the appellate and revisional authorities under the Act. Sub-section (4) E of the said section specifically provides that if necessary, after further enquiry as it thinks fit either personally or through the Controller, the appellate authority shall decide the appeal. Therefore, the appellate authority has by express provision jurisdiction to admit additional evidence. Indeed in this case from the written statement, it appears that the only contention that was sought to be raised was about the extent of the accommodation available to the landlord in F the ancestral house of the landlord.

The allegation about the alleged sale of the premises near Kabir Bhavan was not clearly spelled out. Therefore, if the interest of justice so demanded, the appellate authority was justified in admitting the additional evidence. The parties in this case had ample opportunity to test the veracity and to examine G and submit on the value of such additional evidence. No prejudice could be said to have been caused by admission of such additional evidence. In *State of Kerala* v. *K.M. Charia Abdullah & Co.*, [1965] 1 SCR 601 this Court was dealing with similar power under Madras General Sales Tax Act, 1939 and observed at page 610 of the report that by sub-section (4) of section 250 of the Income Tax Act, 1961 which is similar to section 33(4) of the Indian Income-H tax Act, 1922, the Commissioner was authorised for disposing of the appeal to

make such further enquiry or to direct the Income-tax Officer to make further enquiry as he thought fit and report upon them. This Court held that it could not denied that the said sub-section conferred upon the appellate or revising authority power to make such enquiry as it thought fit for fair disposal of appeal. We are, therefore, clearly of the opinion that in the facts and circumstances of a particular case, the appellate authority has jurisdiction under the Act in question to admit additional evidence. We are further of the opinion that in this case admission of such additional evidence was warranted by the facts and the pleadings in this case. We are satisfied that by such admission of evidence, no prejudice has been caused to the appellant. Indeed reading of the order of the appellate authority makes it abundantly clear that the appellate authority had adverted to all the facts recorded by the Rent Controller and further considered the additional evidence. It is true that in referring to the findings of the Rent Controller, the appellate authority in its order had not specifically referred to the paragraphs of the order of the Rent Controller but that does not mean nor does it indicate that the appellate authority had not considered evidence adduced before the Rent Controller. We are, therefore, unable to sustain the objections urged on behalf of the appellant by Shri Banerji, on admission and consideration of the additional evidence.

The appellate authority noted that the party had led evidence before the Rent Controller and after hearing the party, the Rent Controller held in the manner he did. The appellate authority therefore was conscious of the evidence adduced by the appellant before the Rent Controller. The criticism that there was no consideration of the evidence adduced by the appellant before the Rent Controller by the appellate authority is, therefore, not justified in the facts and circumstances of the case. The Rent Controller as noted hereinbefore held that the appellant had proved the bona fide requirement. The appellate authority had noted the evidence adduced by the respondent before the appellate authority. It is clear that the residential house of the family of the petitioner was having two rooms only and there was large number of persons occupying the two rooms. The family of the petitioner consisted of really seven brothers and one sister. Admittedly two brothers and their families were occupying the said premises. The premises in question belonged to the grand father of the respondent. The grand father was an advocate. He died. After his death his chamber was let out to Laxmi Commercial Bank. It was contended that the respondent was a co-parcener in the said joint family house. It was submitted that if the said chamber which was a big room was available, then, it could not be said that there was dearth of the accommodation in the ancestral house. It is true that the appellate authority had proceeded on the basis that the two rooms for occupation were available in the said house for the father and the two sons including the respondent and

his family in the ancestral house. But assuming that even if we take into consideration the chamber of the late grand father which had been let out to Laxmi Commercial Bank, that will also be wholly insufficient to meet the reasonable and bona fide requirement of the respondent. The appellate authority further held that the appellant was a licensee in respect of the ancestral house and he was staying there with the permission or the licence given by his father and he had no right and as such his interest in the ancestral house could not be considered to be "occupying another residential house" in terms of Clause (1) of sub-section 3(a) of section 13 of the Act. It was submitted before us that this is incorrect because a co-parcener in respect of the ancestral house was a co-owner and an owner could not be considered to be a licensee of the father in respect of a house belonging to Mitakshara joint family. There is no dispute that the family in question is governed by the Mitakshara School of Hindu Law.

It is abundantly clear that Ashok, Isher and Jagadish being the brothers of the appellant and the family belonging to the joint family of the respondent with their children were staying in the ancestral house. Lalit, another brother, had another house. As mentioned hereinbefore there were other persons but about their stay there was no clear evidence. It is asserted by the respondent that they are seven brothers and one sister. But even assuming that Ashok, Isher and Jagadish and the children stay in the ancestral house and assuming that the big room which had been let out to Laxmi Commercial Bank is taken into consideration, the accommodation is still very inadequate for reasonable and bona fide requirement of the landlords. The question, therefore, whether the respondent was a licensee of his father or a co-owner of the property, namely the ancestral house is not really necessary to be decided. But it was contended on behalf of the appellant that this approach of the appellate authority had vitiated the conclusion. It is therefore necessary to allay the grievance of the appellant on this score.

Our attention was drawn to a decision of the Judicial Committee in *Rani Sartaj Kuari and Another* v. *Rani Deoraj Kuari,* [15] Indian Appeals, 51 (Mother and Guardian of Lal Narindur Bahadur Pal). That case was in respect of an impatible estate governed by the Mitakshara School of Hindu Law. There was a custom that the estate was impartible and was descendible to a single heir by the rule of primogeniture. It was held that in order to render alienations by the rejah in that case invalid as made without the consent of his son it must be shown,that the rajah's power of alienation was excluded by the custom or by the nature of the tenure. In such a raj the son is not a co-sharer with his father. The Judicial Committee further observed that property in ancestral estate acquired by birth under the Mitakshara law is so connected with the right to partition that it does not exist independently of such right. At

page 64 of the report, the Judicial Committee observed that the property in the paternal or ancestral estate acquired by birth under the Mitakshara law is, in the opinion of the Judicial Committee, so connected with the right to partition, that it did not exist where there was no right to it. We are of the opinion that no much support can be sought for by the appellant from the said decision. Here in the instant case, the question is whether the respondent who undoubtedly was governed by the Mitakshara School of Law, had acquired a right to ancestral property by his birth. But this question has to be judged in the light of the Hindu Succession Act, 1956. Reliance was also placed on *State Bank of India* v. *Ghamandi Ram (Dead) Through Shri Gurbax Rai* [1969] 3 SCR 681 at page 686 of the report, this Court observed that according to the Mitakshara School of Hindu law all the property of a Hindu joint family was held in collective ownership by all the coparceners in a quasi-corporate capacity. The Court approved the observations of Mr. Justice Bhashyam Ayyanger in *Sundarsanam Maistri* v. *Narasimhulu Maistri and Anr.* [ILR 25 Mad. 149, 154. But the question in the instant case is the position of the respondent after coming into operation of the Hindu Succession Act, 1956. Shri Banerji drew our attention to Mulla's '*Hindu Law*' 15th Edition at page 924 where the learned commentator had discussed effect in respect of the devolution of interest in Mitakshara coparcenary property of the coming into operation of the Hindu Succession Act, 1956.

This question has been considered by this Court in *Commissioner of Wealth Tax, Kanpur and Others* v. *Chander Sen and Others*, [1986] 3 SCC 567 where one of us (Sabyasachi Mukharji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by section 8, he does not take it as Kar of his own undivided family but takes it in his individual capacity. At pages 577 to 578 of the report, this Court dealt with the effect of section 6 of the Hindu Succession Act, 1956 and the commentary made by Mulla, 15th Edn. pages 924-926 as well as Mayne's on *Hindu Law* 12th Edition pages 918-919. Shri Banerji relied on the said observations of Mayne on 'Hindu Law', 12th Edn. at pages 918-919. This Court observed in the aforesaid decision that the views expressed by the Allahabad High Court, the Madras High Court, the Madhya Pradesh High Court and the Andhra Pradesh High Court appeared to

A be correct and was unable to accept the views of the Gujarat High Court. To the similar effect is the observation of learned author of Mayne's *Hindu Law*, 12th Edn. page 919. In that view of the matter, it would be difficult to hold that property which developed on a Hindu under section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-a-vis his own sons. If that be the position then the property which developed upon the father of the respondent B in the instant case on the demise of his grandfather could not be said to be HUF property. If that is so, then the appellate authority was right in holding that the respondent was a licensee of his father in respect of the ancestral house.

But as mentioned hereinbefore, even if we proceed on the assumption that the respondent was a member of the HUF which owned the ancestral C house, having regard to his share in the property and having regard to the need of other sons of the father who were living in the ancestral house along with their families, the appellate authority was still right in holding that the need of the respondent was bona fide.

The second aspect of the matter which was canvassed before us was that D the respondent had purchased another house near Kabir Bhavan in 1971 and there were nine rooms in the said house. It was the appellant's contention that it was sold to Smt. Resham Devi which was a benami transaction. It was further his contention that in respect of the said house the respondent had got vacant possession. Thirdly, it was contended that the respondent had within his choice to keep the said premises but he sold the said premises in question. Therefore he E does not come within the conditions stipulated in section 13(3)(a)(i) of the Act. The appellate authority on appraisal of evidence before the Rent Controller as well as before it came to the conclusion that vacant possession had not been obtained. There was evidence on record to come to that conclusion.

Our attention was drawn to the document on behalf of the appellant in F support of contention that the document which was registered document recited that vacant possession has been given. The document stated *'Kabza Khali maken ka dia hai'*. It was asserted that it meant that vacant possession in fact had been given. The oral evidence adduced indicated otherwise. Indeed the expression aforesaid does not mean that actual physical vacant possession had been handed over to the purchaser. In document of this type it can equally mean G that the legal right of possession not the actual possession had been handed over to the purchaser. Therefore, evidence was permissible to explain what it meant. Reliance for this purpose was placed on a decision of the Division Bench of the Allahabad High Court in *Lachhman Das* v. *Rent Control and Eviction Officer, Bareilly and another.*, AIR [1953] Allahabad 458 at 459, paragarph 6. Therefore in the instant case even if the legal right of occupation had passed on H which, in our opinion, was sought to be conveyed by the expression noted

hereinbefore, then whether the premises in question was actually vacant to be occupied by the respondent is a question on which the oral evidence could be adduced. There was ample justification on the evidence on record to come to the conclusion that it was 'not physically vacant'. The expression noted above therefore on this aspect is really *non sequetur* and evidence would clinch the issue. There was the evidence for the appellate authority to come to the conclusion that the house near Kabit Bhavan was not vacant. It acted on the same and in our opinion it did not commit any error in so doing.

The next aspect urged was that it was benami transaction because the father of the respondent has gone to the Registration office. In view of the evidence discussed by the appellate authority, specially the income-tax records and other records to which it is not necessary to advert in detail as well as the oral testamony in this case, the appellate authority rejected the contention that the sale was a benami transaction by the respondent. The most important aspect, however, as was highlighted by the respondent was that the said property was purchased in July, 1971 and sold in August, 1972 because it was not in vacant possession.

In the instant case suit for eviction in question for the need of the landlord was filed in January, 1972. Therefore, the respondent could not be said in view of the said premises having been purchased and sold by him prior to the institution of the suit, to have occupied another residential building in the urban area. It was contended that by sale the respondent has disentitled himself to the relief asked for because he had in his choice the residential building for his occupation but he sold it. We are unable to accept this contention. There is no evidence either before the Rent Controller or before the appellate authority that this sale to Resham Devi was with an intention or with a purpose to defeat the claim of the appellant or to take out the respondent from the purview of the limitation imposed by clause (1) (a) of sub-section (3) of section 13 of the Act. If we read in such manner the Act in question, the Act would expose itself to the vice of unconstitutionality. It is well-settled that though the Rent Act is a beneficial legislation, it must be read reasonably and justly. If more limitations are imposed upon the right to hold the property then it would expose itself to the vice of unconstitutionality. Such an approach in interpretation of beneficial statutes is not warranted. It is true that one should iron out the creases and should take a creative approach as to what was intended by a particular provision but there is always, unless rebutted a presumption as to constitutionality and the Act should be so read as to prevent it from being exposed to the vice of un-constitutionality. State is also presumed to act fairly. See in this connection the observations in *State of Karnataka and Another* v. *M/s. Hans Corporation*, **[1980] 4 S.C.C. 697 at 704 & 706** *and K.P. Varghesev. Income Tax Officer, Ernakulam and Another*, **[1981] 4S.C.C. 173 at 179-180**

A (Paragraphs 5 & 6). See also the observations of this Court in *Kasturi Lal Lakshmi Reddy* v. *State of Jammu and Kashmir & Another,* **[1980] 3 SCR 1338 at 1357.**

In fact the respondent did not have a house in his possession. He purchase one before, but as it was not vacant, he sold away before the B institution of the suit. There was no restriction by the Act on sale and alienation of property. At the relevant time the respondent fulfilled all the requirements to maintain an action for eviction. Shri Raja Ram Agarwala, counsel for the respondent, submitted before us that we should take a creative, reasonable and rational approach in interpreting the statute. We should not, he submitted, put such an interpretation as would prevent sale or mortgage of the property by the C owner and in this case he was justified in saying that the landlord respondent did not have vacant possession. As the facts of this case warrant and in fact the respondent had sold away the property 1½ years before his suit for his need was instituted, it cannot be said unless there was definite evidence that it was done with the intention to defeat the appellant's claim so as to be read that the landlord occupied another residential house at the relevant time i.e. at the time D of institution of the suit.

The appellate authority accepted the respondent's need and found him within the purview of the Act. The High Court did not interfere in revision, nor shall we under Article 136 of the Constitution.

E The appeal, therefore, fails and is accordingly dismissed. Interim orders are vacated. In the facts and circumstances of the case, however, the parties will pay and bear their own costs.

M.L.A. Appeal dismissed.