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MANSOOR KHAN

v.

MOTIRAM HAREBHAN KHARAT AND ANR.

MARCH 19, 2002

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[R.C. LAHOTI AND RUMA PAL, JJ.]

*Rent and Eviction :*

C *Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 : Clause 13—Suit premises, a shop, situated in city of Rasood, Maharashtra—Landlord filed suit for eviction of tenant in 1985 after terminating his tenancy—City of Rasood notified a Municipality in 1989 and with such notification the Order came to be applied to the premises—Tenant contending that by virtue of city of Rasood becoming a Municipality the Order became applicable to the premises on 9.10.1989 and thus even in pending suit a decree could not have been passed—High Court rejected tenant's plea—*  
D *Held, what is prohibited by the Order is the initiation of the proceedings by the landlord—In the instant case the proceedings were initiated by filing suit before civil court much before the Order became applicable to the premises—The Order is not retrospective in operation—It does not affect the validity of*  
E *the proceedings initiated before the date on which the Order became applicable—Clause 13 of the Order does not restrain the Court from exercising its power to pass a decree of eviction—All that Clause 13 provides is to impose a restriction on the right of the landlord to initiate the proceedings for eviction—Inasmuch as the proceedings for eviction were already initiated and*  
F *the Order is not retrospective in operation, it does not affect the validity of the previously instituted proceedings nor does it take away the power of the Court to pass a decree of eviction in the pending suit.*

*Nandlal and Ors. v. Motilal, AIR (1977) SC 2143, referred to*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4266 of 1999.

From the Judgment and Order dated 19.2.99 of the Mumbai High Court in S.A. No. 25 of 1999.

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R.S. Lambat for the Appellant.

S.M. Jadhav for the Respondents.

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The following Order of the Court was delivered :

The suit premises consist of a shop. The tenant-appellant was inducted into the suit premises by the landlord-respondents initially for a period of five years under lease dated 01.09.1963. The tenant-appellant executed another lease dated 10.10.1968 for a period of one year in favour of the landlord-respondents. His possession over the suit premises continued under the lease. These are the findings of fact and not open to question at this stage.

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The suit premises are situated in the city of Risod in the erstwhile province of C.P. and Berar. By a notification dated 09.10.1989, issued by the State Government, Risod was declared a Municipality for the first time. On 02.05.1985, the landlord-respondents had filed a suit for eviction of the tenant-appellant from the suit premises after terminating his tenancy. The Central provinces and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter the Order, for short) came into force in the whole of Central Provinces and Berar and the States integrated with the Central Provinces and Berar with effect from 26.07.1949. By the same notification dated 26.07.1949, the State Government had notified that Chapters II and IV of the Order shall apply to all the Municipalities in the Central Provinces and Berar and the States integrated with the Central Provinces and Berar with effect from the date of the notification i.e. 26.07.1949. By notification dated 09.10.1989, Risod, District Yavatmal was notified to be a Municipality. With effect from the date of Risod having been notified as a Municipality, the Order became applicable to Risod and consequently to the suit premises also as situated within the territorial limits of Risod.

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The only plea raised by the learned counsel for the tenant-appellant is that by virtue of Risod having been notified as a Municipality, the Order became applicable to the suit premises on 09.10.1989 and, therefore, even in the pending suit, a decree for eviction could not have been passed against the tenant-appellant. The plea has not found favour with the High Court or any of the courts below. However, the same plea has been reiterated by the learned counsel for the tenant-appellant before this Court.

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Clause 13 of the Order (relevant part thereof) provides as under:

“13. (1) No landlord shall, except with the previous written permission of the Controller:-

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A (a) give notice to a tenant determining the lease or determine the lease if the lease is expressed to be determinable at his option; or

(b) where the lease is determinable by efflux of the time limited thereby, require the tenant to vacate the house by process of law or otherwise if the tenant is willing to continue the lease on the same terms and conditions.

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(2) A landlord who seeks to obtain permission under sub-clause (1) shall apply in writing to the Controller in that behalf;

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Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, no application under items (vi) and (vii) of sub-clause (3) shall be entertained by the Controller before the expiry of such period.

(3) If after hearing the parties the Controller is satisfied:-.....

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[Note: Below sub-clause (3) are enumerated nine grounds on availability whereof the Controller may grant the landlord permission to give notice to determine the lease as required by sub-clause (1)].

E So long as the provisions of the Order are not applicable to any premises, the rights and obligations of landlord and tenant are governed by the provisions of the Transfer of Property Act. Once the Order becomes applicable, a landlord cannot give notice to a tenant determining the lease nor can initiate proceedings for recovery of possession from the tenant except with the previous written permission of the Controller in accordance with Clause 13 of the Order. What is prohibited by the Order is initiation of the proceedings by the landlord. In the present case, the proceedings were initiated by filing suit before a civil court, much before the provisions of the Order became applicable to the suit premises. There is nothing in the Order which makes it applicable to the pending suit for eviction of tenant.

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G The learned counsel for the tenant-appellant has placed reliance on a decision of this Court in *Nandlal and Ors. v. Motilal*, AIR (1977) SC 2143. The said decision is an authority for the proposition that the Order becomes applicable to any area which is notified to be a Municipality from the date of such notification because the Order was already applicable in the Province of C.P. and Berar. However, this Court has very specifically held that the provisions of the Order would become applicable from that date i.e. the date

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on which a particular area within which the suit premises are situated, is notified to be a Municipality. The Order is not retrospective in operation. A

It does not affect the validity of the proceedings initiated before the date on which the Order became applicable. Clause 13 of the Order does not restrain the Court from exercising its power to pass a decree of eviction. All that Clause 13 provides is to impose a restriction on the right of the landlord to initiate the proceedings for eviction. Inasmuch as the proceedings for eviction were already initiated and the Order is not retrospective in operation, it does not affect the validity of the previously instituted proceedings nor does it take away the power of the court to pass a decree of eviction in the pending suit. B C

For the foregoing reasons, we do not find any merit in the singular plea advanced on behalf of the tenant-appellant. The appeal is devoid of any merit and liable to be dismissed. It is dismissed accordingly though without any Order as to costs.

However, the tenant-appellant is allowed time till 30th June, 2002 to vacate the premises, subject to his filing the usual undertaking before the executing court and clearing all the arrears of rent or charges for occupation within a period of three weeks from today. D

R.P.

Appeal dismissed. E