SHRI KAILASH CHAND AND ANR. A

v.

SHRI DHARAM DASS

OCTOBER 7, 2004

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.] B

Himachal Pradesh Urban Rent Control Act, 1987: s. 14(3),(a)(i) and third proviso—Bar against landlord to seek eviction of tenant again, once he had obtained relief on the same ground of personal requirement—Eviction of tenant on ground of **bona fide** *requirement of landlord—Subsequently application by landlord for eviction of tenant under the same provision, but in changed circumstances—Maintainability of -Held, it would be appropriate that the matter be placed for consideration by a Bench of three Judges—Ordered accordingly.* C

D

Molar Mal (dead) through Lrs. **v.** *M/s Kay Iron Works (P) Ltd.,* **[2000] 4 SCC 285;** *Brij Lal Puri* **v.** *Muni Lal,* **AIR (1979) P&H 132 and** *Jagir Singh* **v.** *Jagdish Pal Sagar,* **(1980) 1 RCR 494 (P&H), referred to.**

Food Corporation of India **v.** *New India Assurance Co. Ltd. and Ors.,* **[1994] 3 SCC 324;** *K.S. Sundararaju Chettiar* **v.** *M.R. Ramachandra Naidu,* E **[1994] 5 SCC 14;** *State of Punjab and Anr.* **v.** *Khan Chand,* **[1974] 2 SCR 768;** *Bhatia International* **v.** *Bulk Trading S.A. and Anr.,* **[2002] 4 SCC 105;** *Rakesh Wadhawan and Ors.* **v.** *Jagdamba Industrial Corpn. and Ors.,* **[2002] 5 SCC 440 and** *Suraj Mal* **v.** *Radheyshyam,* **[1988] 3 SCC 18, cited.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 390 of F 2004.

From the Judgment and Order dated 27.11.2001 of the Himachal Pradesh High Court in C.R. No. 35 of 2004.

Dharuv Mehta and Mohit Chaudhary for the Appellant. G

Rajesh Gupta, Harpeet Singh and Ajay Choudhary, for the Respondent.

The following Order of the Court was delivered:

 H

A

ORDER

The present appeal is filed against the judgment and order dated November 27, 2001 passed by the High Court of Himachal Pradesh, Shimla in Civil Revision No. 35 of 1999. By the said order, a single Judge of the High Court of Himachal Pradesh dismissed the eviction petition filed by the B landlord reversing order of ejectment passed by the Rent Controller, Shimla and confirmed by the Appellate Authority (II), Shimla.

The appellant herein is the owner of a building being House No. 108, Anandele, Shimla ('suit premises' for short). He let the first floor of the suit premises to the respondent. The landlord filed an eviction petition against C the tenant in respect of the first floor of the building in November, 1980. The petition was allowed by the Rent Controller by an order dated October 31, 1984. The tenant preferred an appeal and challenged the decree of eviction. On September 17, 1986, however, a compromise was arrived at between the parties. On the basis of the said compromise, the tenant agreed to vacate the D first floor in favour of the landlord and was inducted as tenant of the ground floor of the same building.

According to the landlord, at the relevant time he was staying all alone in Shimla. Subsequently, however, his wife had also shifted from village Panhoi to Shimla. Moreover, the landlord wanted to get his child educated E at Shimla where best facilities for studies are available. He, therefore, filed eviction petition against the tenant. The Rent Controller, Shimla, by an order dated January 20, 1993, held that the landlord wanted the premises for his **bona fide** occupation and accordingly an order of eviction was passed. Being aggrieved by the said order, the tenant preferred an appeal which was dismissed F by the Appellate Authority (II), Shimla, by an order dated November 30, 1998. The aggrieved tenant carried the matter to the High Court by filing Civil Revision 35 of 1999. According to the landlord, a new ground which was never raised before the courts below was put forth by the tenant contending that the eviction petition filed by the landlord was not maintainable in view of third proviso to sub-section (1) of Section 14 of the Himachal Pradesh G Urban Rent Control Act, 1987 (hereinafter referred to as 'the Act'). Section 14 of the Act provides for eviction of tenants in certain cases on certain grounds. Sub-section (3) deals with cases of requirement of building premises by the landlord. The relevant part of sub-section (3) reads as under :

"(3) A landlord may apply to the Controller for an order directing

H

the tenant to put the landlord in possession

(a) in the case of a residential building, if

(i) he requires it for his own occupation :

xxxxx xxxxxxx xxxxxx

xxxxx xxxxx xxxxxxx

Provided further that where the landlord has obtained possession of any building or rented land under the provisions of clause (a) or clause (b) he shall not be entitled to apply again under the said clause for the possession of any other building of the same class or rented land :"

It was contended on behalf of the tenant before the High Court that since the landlord had obtained possession of the first floor earlier he was not entitled to apply again. The petition, therefore, was not maintainable and was liable to be dismissed on that ground alone. The High Court upheld the contention relying on a decision of this Court in *Molar Mal (dead) through LRs.* v. *M/s. Kay Iron Works (Pvt.) Ltd.*, [2000] 4 SCC 285.

A two-Judge Bench of this Court in *Molar Mal* had an occasion to consider a similar provision in Haryana Urban (Control of Rent and eviction) Act, 1973 (hereinafter referred to as "the Haryana Act"). Proviso to Section 13(3)(b) of the Haryana Act also creates an embargo on the landlord from seeking eviction of the tenant if he had earlier obtained eviction of other tenants under the said provison. Considering the ambit and scope of the provision, the Bench observed :

"On behalf of the landlord, it is next contended that the proviso does not apply to the facts of this case, since on the date of filing of the present eviction petition, the landlord had not obtained possession of any other tenanted premises. Subsequent possession obtained by it would not be an embargo for the landlord to claim possession of the present petition-scheduled premises. Elaborating this argument on behalf of the landlord, it is contended that if on the date of filing of the eviction petition, a landlord has not by then obtained possession of any other premises, then the proviso would not be a bar for the landlord to file an eviction petition and obtain possession of another premises, even though during the pendency of the petition, he obtains

possession of other premises. The landlord wants us to give a literal meaning to the words "entitled to apply again" found in the proviso. If we give such a meaning to the words "entitled to apply again" without taking into consideration the object and scheme of the Act, the proviso may give an impression that the embargo incorporated in that proviso would be applicable only at the stage of filing of the eviction petition. But such an interpretation will run counter to the very scheme of the Act. It goes without saying that the Haryana Urban (Control of Rent and Eviction) Act, 1973 like any other similar Act in other States in India is an enactment which controls the fixation of rent and eviction of the tenants from rented premises to which the Act is applicable. This Act controls the right of a landlord to seek eviction of tenanted premises, it restricts the right of a landlord to seek eviction on those grounds mentioned in the Act. As a matter of fact, a landlord can seek eviction only the grounds enumerated under the Act and on no other grounds. This is clear from the language of Section 13(1) of the Act which in specific terms says that a tenant in possession of a building or rented land shall not be evicted therefrom except in accordance with the provisions "of this section". Section 13 enumerates various grounds on which a landlord can seek possession. This right is further restricted if the landlord has obtained possession of similar premises under the same provisions of law by the proviso. Now the question is whether the bar under the proviso is applicable only to the filing of an application or it is a bar on the right of the landlord. If the interpretation suggested by the landlord is accepted then the bar will be on the application by the landlord and not on his right to evict. This, in our opinion, will not be the correct interpretation of the proviso. A careful perusal of the various provisos found in sub-section (3) of Section 13 of the Act clearly shows that the legislature intended to further restrict the right of a landlord to seek eviction under the clauses mentioned in that sub-section apart from the restrictions imposed in Section 13 of the Act. For example, if the landlord is seeking eviction of a tenant on the ground that the same is required for the use of his son then, in view of the proviso applicable to that sub-section, he can seek eviction of the premises only once. Similarly, if the landlord is seeking eviction for his own occupation under Section 13(3)(b) of the Act then by virtue of the proviso applicable to that sub-section, the landlord can seek such eviction only once in regard to the premises of the same nature.

Therefore, in our opinion, the bar imposed by the proviso is in fact a bar on the right of the landlord to seek actual eviction and not confined to the filing of the application for eviction. On behalf of the landlord, it is contended that while interpreting a statute the courts should apply the rule of literal construction and if it is so interpreted then the wording of the proviso would show that the restriction imposed by the proviso is restricted to the stage of filing of the application for eviction only. We agree with this contention of the landlord that normally the courts will have to follow the rule of literal construction which rule enjoins the court to take the words as used by the legislature and to give it the meaning which naturally implies. But, there is an exception to this rule. That exception comes into play when application of literal construction of the words in the statute leads to absurdity, inconsistency or when it is shown that the legal context in which the words are used or by reading the statute as a whole, it requires a different meaning. In our opinion, if the expression "entitled to apply again" is given its literal meaning, it would defeat the very object for which the legislature has incorporated that proviso in the Act inasmuch as the object of that proviso can be defeated by a landlord who has more than one tenanted premises by filing multiple applications simultaneously for eviction and thereafter obtain possession of all those premises without the bar of the proviso being applicable to him. We are of the opinion that this could not have been the purpose for which the proviso is included in the Act. If such an interpretation is given then the various provisos found in sub-section (3) of Section 13 would become otiose and the very object of the enactment would be defeated. Any such interpretation, in our opinion, would lead to absurdity. Therefore, we have no hesitation in interpreting the proviso to mean that the restrict contemplated under that proviso extends even up to the stage when the court or the tribunal is considering the case of the landlord for actual eviction and is not confined to the stage of filing of eviction petition only."

The attention of the Court was invited to two decisions of the High Court of Punjab and Haryana in (i) *Brij Lal Puri* v. *Muni Lal,* AIR (1979) P&H 132 and (ii) *Jagir Singh* v. *Jagdish Pal Sagar,* [1980] 1 RCR 494 (P&H)], wherein the High Court held that the proviso does not lay down that if the entire building which is needed by a landlord for his personal use, is occupied by more than one tenant, he or she cannot take out proceeding against other tenants after having evicted one. It was further observed; "The

A object of this proviso is that a landlord should not be allowed to seek unreasonable ejectment of tenants from independent buildings if he has already succeeded in evicting a tenant from the building which is sufficient for his personal occupation." Observing that the law was not correctly laid down by the High Court, the two-Judge Bench proceeded to state;

B "Based on the above-cited two judgments of the High Court it is contended that the landlord in the instant case is seeking eviction of a part of the premises owned by it which is leased to the present appellant. Eviction of the three other tenants referred to hereinabove was from the premises which are parts of the same premises, therefore, in view of the above judgment the bar under the proviso is not C applicable. We find it difficult to accept this argument of the landlord also. From the language of the proviso we do not find any support for this argument of the appellant or to the conclusions arrived at by the High Court in the above-referred judgments. The proviso does not make any such distinction between a landlord seeking possession D of the premises held by more than one tenant occupying the same building or the tenants occupying different independent buildings under the same landlord. As we have observed, the object of the proviso like any other provisions of the Act, is to further restrict the right of the landlord to seek eviction; if that be so, we do not find any justification in reading into the proviso something as conferring a E larger right on the landlord to evict more than one tenant if those tenants are occupying different parts of the same premises. Therefore, we are of the opinion that the view expressed by the High Court in the above-referred case does not lay down the correct law. Consequently, the argument of the landlord based on the said judgment F is also rejected."

Before us, the learned counsel for the respondent-tenant contended that the point is finally concluded by this Court in Molar Mal. Since the appellant-landlord has already obtained possession in previous proceeding from the respondent-tenant, bar of third proviso to sub-section (3) of Section 14 of the G Act got attracted and he was not entitled to apply again under sub-section (3) of Section 14 of the Act for possession of the ground floor occupied by the tenant. The High Court was, therefore, right and wholly justified in dismissing the petition.

Learned counsel for the landlord, on the other hand, strenuously argued H that the landlord has not got possession as contended by the tenant. Pursuant

to the compromise arrived at between the parties, the landlord obtained possession of first floor, but in lieu thereof, he allowed the tenant occupy the ground floor. Thus, it was not a case of obtaining of possession. It was submitted that third proviso to Section 14(3) of the Act would not apply to such compromise and exchange of premises so as to deprive the right of the landlord to get eviction of tenant on the ground of *bona fide* requirement. It was also urged that what is contemplated by the third proviso to Section 14(3) of the Act is that a landlord on the "self-same grounds" is not entitled to apply again for possession of any other building, if he has obtained possession from the tenant. But if the circumstances have changed or his need is increased, the bar has no application and the petition for eviction of tenant will be maintainable and the case has to be decided on its own merits. It was also contended that if the interpretation sought to be suggested by the tenant is accepted irrespective of need and requirement by the landlord that the petition would not be held maintainable, the provision should be held arbitrary, unreasonable and *ultra vires*.

In support of the above contentions, the learned counsel drew our attention to the following decisions : *Food Corporation of India* v. *New India Assurance Co. Ltd. and Ors.*, [1994] 3 SCC 324, *K.S. Sundararaju Chettiar* v. *M.R. Ramachandra Naidu*, [1994] 5 SCC 14, *State of Punjab and Anr.* v. *Khan Chand*, [1974] 2 SCR 768, *Bhatia International* v. *Bulk Trading S.A. and Anr.*, [2002] 4 SCC 105, *Rakesh Wadhawan and Ors.* v. *Jagdamba industrial Corporation and Ors.*, [2002] 5 SCC 440; *Suraj Mal* v. *Radheyshyam*, [1988] 3 SCC 18.

Having considered the rival contentions of the parties, in our opinion, *prima facie* the submission of the landlord deserves serious consideration. In our opinion, it may be possible for the landlord to argue that in the facts and circumstances of the case, it may not be said that the landlord has obtained possession of a building or premises falling within the mischief of third proviso to Section 14(3) of the Act. Again, the third proviso to Section 14(3) of the Act may apply to the facts which were before the court when the suit/application was decided by the court/authority and the landlord has obtained possession of a building or a part thereof. But if the circumstances have changed and the necessity increases, it may be possible for the landlord to apply under sub-section (3) of Section 14 of the Act on the ground of *bona fide* requirement. To such a situation, third proviso to Section 14(3) of the Act may not prohibit him from approaching a competent court/authority. It appears to us, as observed by the High Court of Punjab and Haryana in two

A cases referred to above, that the object of the proviso is to restrict the landlord from seeking unreasonable ejectment of tenants. If he was successful in evicting a tenant from a building and his personal requirement is fulfilled or satisfied, he cannot invoke Section 14(3) of the Act again. But if the requirement still continues or the circumstances are different, the third proviso to Section 14(3) of the Act has no application. The submission of the learned B counsel that if the third proviso to Section 14(3) of the Act is not interpreted reasonably as submitted by him, it may have to be tested on the touch stone of Article 14 cannot be said to be totally ill-founded.

In view of the aforesaid, in our view a fresh look is necessary on the C provision, so that the grey areas noticed by us earlier may be creased out. It is, therefore, appropriate that the matter be placed for consideration of the question by a Bench of three Judges. Accordingly, we direct the Registry to place the papers before Hon'ble the Chief Justice of India for taking an appropriate action.

Ordered accordingly.

R.P.