

HARKESH CHAND

A

v.

KRISHAN GOPAL MEHTA & ORS.

(Civil Appeal No. 1778 of 2010)

FEBRUARY 13, 2017

B

[S. A. BOBDE AND ASHOK BHUSHAN, JJ.]

Rent Control and Eviction – Notice for termination of tenancy of shop – U/s. 106 of Transfer of Property Act – Issued in September 1972 – Suit for eviction filed in October 1972 – Dismissed by trial court on the ground that tenancy was protected by United Provinces (Temporary) Control of Rent and Eviction Act, 1947 – Order of trial court confirmed by Revisional Court – In writ petition High Court held that on 15th July 1972 the 1947 Act was repealed and the special notification [under new Act i.e. Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972] covering the area in question was issued on 23rd January 1973, thus there was no protection of tenancy between 15th July 1972 and 23rd January 1973 and hence the notice terminating the tenancy was valid – On appeal, held: The 1947 Act was made applicable to the area in question by notification dated 31st March 1949 – By virtue of s. 24 of Uttar Pradesh General Clauses Act, 1904, the notification dated 31st March 1949 continued to exist even after the 1947 Act was repealed upon reenactment of the 1972 Act – Hence, the suit is untenable – However, in the facts and circumstances of the case as well as in the interest of justice, tenant directed to hand-over the possession of the premises in question to the land-lord after a period of three years.

C

D

E

F

Disposing of the appeal, the Court

HELD 1. It is clear from sub-section (2) of s. 1 of United Provinces (Temporary) Control of Rent and Eviction Act, 1947, that it extended to the whole of the erstwhile United Provinces and applied to every municipal area, cantonment area and notified area as per the provincial Government Notification in the official gazette. Undisputedly, the Governor declared that the provisions of Section 2, 3(a), 4, 5, 6, 8, 11, 12 and 16 of the 1947 Act shall

G

H

A apply to the area in question by a Notification dated 31st March, 1949. [Para 14] [292-B-C]

B 2.1 A plain reading of s. 24 of Uttar Pradesh General Clauses Act, 1904 suggests that any statutory instrument (which a notification is) issued under the repealed enactment continues in force as if it were issued under the re-enacted provisions to the extent that it is not inconsistent with the re-enacted provisions. Such continuance exists till the statutory instrument is superseded by a statutory instrument issued under the re-enacted provisions. [Para 16] [292-G-H; 293-A]

C 2.2 Section 21 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 provided the same restrictions on the eviction of tenants on specified grounds that Section 3 (a) of the 1947 Act did. Thus, there is no inconsistency whatsoever found between the two provisions. There is also no express provision to the contrary in the subsequent enactment i.e. 1972 Act. [Para 19] [293-E-F]

D 2.3 The provisions of an Act, and a conditional legislation such as a notification, belong to a different order of things. A statutory instrument (i.e. the notification) itself does not enact the protection to the tenants. The Act of 1947 does that. The notification merely makes the enactment applicable to the area in question. Apparently the purpose of the re-enacted provision is, *inter alia*, to protect the tenants from eviction, except on special grounds. Nothing in the 1972 Act shows that such a protection was intended to be removed from any area or for that matter, the area in question. In fact, the contrary is clear from the fact that a notification expressly applying the re-enacted provisions to the area in question was issued on the 21st of March, 1973. Thus, there can be no inconsistency between the notification applying the 1947 Act to the area in question and the re-enacted provisions of the Act unless the Act of 1972 clearly expresses an intention to remove the protection accorded to the tenants from an area. [Para 20] [293-F-H; 294-A-B]

G 2.4 None of the conditions which derogate from the continuation of the notification exist in the present case. There is no express provision to the contrary, there is no supersession

H

by any statutory instrument under the re-enacted provisions and there is nothing inconsistent in the continuance of the notification with any of the re-enacted provisions. [Para 22] [294-D-E] A

2.5 The notification under the 1947 Act continued in spite of its repeal and the enactment of the 1972 Act. It cannot be said that in the hiatus between the repeal of the 1947 Act and the issuance of a notification applying the 1972 Act to the area in question the Legislature intended that the tenants had no protection from eviction and there was an unrestricted right to evict them. [Para 27] [297-A-B] B

2.6 The old Act, i.e. 1947 Act applied to the area in question by virtue of notification dated 31st of March, 1949, when the suit for the eviction of the appellant was filed. The suit is untenable for the want of permission under the provisions of the 1972 Act and is liable to be dismissed. [Para 29] [297-D-E] C

The Chief Inspector of Mines and Anr v. Lala Karam Chand Thapar Etc. [1962] 1 SCR 9; *The State of Bombay v. Pandurang Vinayak Chaphalkar and Ors.* [1953] 4 SCR 773; *Neel alias Niranjana Majumdar v. The State of West Bengal* (1972) 2 SCC 668 : [1973] 1 SCR 675; *State of Punjab v. Harneek Singh* (2002) 3 SCC 481 : [2002] 1 SCR 1060 – relied on. D

3. However, in view of the circumstances of this case, as well as in the interest of justice, it is directed that the appellant-tenant shall hand over possession of the premises to the respondent after a period of three years from the date of judgment. The premise admittedly belongs to the respondent, which he *bona fide* needs after the said period. [Para 30] [297-E-F] E

Case Law Reference

| | | | |
|-------------------|-----------|---------|---|
| [1962] 1 SCR 9 | relied on | Para 23 | |
| [1953] 4 SCR 773 | relied on | Para 24 | G |
| [1973] 1 SCR 675 | relied on | Para 28 | |
| [2002] 1 SCR 1060 | relied on | Para 29 | |

A **CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1778 of 2010.**

From the Judgment and Order dated 27.08.2009 of the High Court of Uttranchal at Nainital in Writ Petition No. 4882 of 2001.

B Nikhil Goel, Ms. Naveen Goel, Ashutosh Ghade, Advs. for the Appellant.

Anurag Dubey, Rajesh Pathak, Abhishek Chakarbarty (For S. R. Setia), R. D. Upadhyay, Advs. for the Respondents.

The Judgment of the Court was delivered by

C **S. A. BOBDE, J.** 1. This is a tenant's appeal. In the impugned judgment, the High Court directed the tenant to be evicted. The Trial Court dismissed the suit for eviction filed by the respondent-landlord. The Revisional Court dismissed the landlord's appeal. In the Writ Petition, the High Court reversed the concurrent findings of both the courts below.

D 2. The tenancy is in respect to a small shop situated in a rural area in the village of Daishwala, Doiwala Town, located in the Dehradun district of Uttarakhand. On the 19th of September, 1972, the landlord issued a notice terminating the tenancy of the shop under Section 106 of the Transfer of Property Act, 1882, and demanded the possession of the shop.

E 3. The landlord filed the present suit for eviction on the 1st of October 1972. The Court of Civil Judge (Junior Division), Dehradun dismissed Small Cause Case No.85 of 1972 with costs. The Trial Court held that even though The United Provinces (Temporary) Control of Rent and Eviction Act, 1947 (U.P. Act No. III of 1947) hereinafter referred to as "the Act of 1947" had been repealed by the aforementioned date and replaced by a new rent act¹ hereinafter referred to as "the Act of 1972" which was brought into force on the 15th of July, 1972, the old act applied to the suit property.

F 4. The Additional District Judge, Dehradun, dismissed the revision petition No. 43 of 1976 filed by the landlord. It was held that the notification by which the provisions of the old act were applicable to the Doiwala area in the year 1949 continued and remained in force on the date when

H ¹ The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972

the notice of termination of the tenancy was issued. Accordingly, the tenancy was protected by the Act of 1947.

A

5. The landlord approached the High Court of Judicature at Allahabad by way of Writ Petition No. 25951 of 2000. This writ petition was transferred to the High Court of Uttarakhand at Nanital and re-numbered as Writ Petition No. 4882 of 2001.

B

6. The High Court of Uttarakhand upheld the landlord's plea that the notice which terminated the tenancy of the shop under the provisions of the Transfer of Property Act, 1882 was valid. The High Court held that the old Act under which the Doiwala area was covered by a notification had been repealed and replaced by the new Act. The old Act of 1947 did not cover the rural areas that are not specially notified. The special notification with respect to Doiwala area came into existence only on the 23rd of January, 1973 and therefore, between the 15th of July, 1972 (when the old act along with its notification stood repealed), and the 23rd of January, 1973 (when the notification was issued), there was no protection to the tenants in Doiwala area under any law. Thus, the notice terminating the tenancy was valid. Accordingly, the High Court allowed the writ petition and set aside the orders of the Trial Court and the Revision Court by which the landlord's suit was dismissed.

C

D

7. Aggrieved by the order of the High Court that decreed the suit for eviction filed by the respondent-landlord, the appellant approached this Court. This Court granted special leave to appeal, and hence this appeal.

E

8. The questions that fall for consideration before us are -

(i) Whether or not, the tenancy in question is protected by Act No.III of 1947.

F

(ii) Whether or not, the notification dated 31st of March 1949 which applied the provisions of the Act of 1947 to Doiwala town was in force on the 19th of September, 1972, i.e. when the landlord terminated the tenancy and sought possession of the suit premises.

G

(iii) Whether or not, Section 24 of the U.P. General Clauses Act, 1904 continued the notification dated 31st of March 1949 that protects Doiwala town by applying the provisions of the Act of 1947.

9. A similar notification was issued under the re-enacted Act of 1972 on the 21st of March, 1973. The Act of 1947 was a temporary

H

A statute enacted to control the letting and renting of property as well as to prevent the eviction of tenants from such accommodation. The provisions of the Section 3 (c) of the Act of 1972 *inter alia* restricted evictions without the permission of the District Magistrate which could be granted only on the grounds specified in the Act.

B 10. The Act of 1947 was extended from time to time and was in force when the Act of 1972 was enacted.

Sub-section (2) of Section 1 of Act No.III of 1947 provided as follows:-

C “Section 1...

(2) It extends to the whole of the United Provinces and applies to every Municipal Area and Cantonment Area and to every Notified Area contiguous to such municipal area or cantonment area and to accommodation situated within one mile of the boundaries of any such municipal area, cantonment area and notified area, and to such other area as the Provincial Government may, from time to time, notify in the official Gazette in this behalf.”

(emphasis supplied)

E Sub-section (2) brought the Act into force on the 1st day of October, 1946. It provided as follows:-

F “(2) It extends to the whole of the United Provinces and applies to every Municipal Area and Cantonment Area and to every Notified Area contiguous to such municipal area or cantonment area and to accommodation situated within one mile of the boundaries of any municipal area, cantonment area and notified area, and to such other area as the Provincial Government may, from time to time, notify in official Gazette in this behalf.”

G Sub-section (4), which provided for its expiry on the 30th September, 1948, read as follows:-

H “(4) It shall cease to have effect on the expiry of September 30, 1948, except as respects things done or omitted to be done before the expiration thereof, and Section 6 of the United Provinces General Clauses Act, 1904, shall apply upon the expiry of the Act as if it had then been repealed by an United Provinces Act.”

Section 43 of the Act of 1972 repealed the Act of 1947. A
Sub-section (2) of Section 1 of the Act of 1972 extended the Act of 1972
to the whole of Uttar Pradesh.

11. A notification under Section 1 (1) of the Act of 1972 declaring B
that the Act shall apply to Doiwala town area was issued on the 21st of
March, 1973. Even though, the subsequent Act is essentially a re- B
enactment of the earlier Act of 1947, the landlord acted on the
presupposition that with the repeal and re-enactment of the Act of 1947
on the 15th of July, 1972, the notification dated 31st March, 1949 also
ceased to exist, thus assuming that there was no law restricting the
eviction of tenants in the Doiwala area during the period between the C
two notifications; ergo, terminating the tenancy on the 19th of September,
1972.

(a) As stated earlier, the primary question before us is as to
whether or not there existed a protection of tenants in the Doiwala area
under Act No.III of 1947 by virtue of the notification dated 31st March, D
1949

The answer to this depends on whether Section 24 of the U.P.
General Clauses Act, 1904 continued the notification dated 31st March,
1949.

12. Shri Nikhil Goel, Advocate for the appellant, contended that E
by virtue of Section 24 of the U.P. General Clauses Act, the notification
dated 31st March, 1949 that applied Act No.III of 1947 to the Doiwala
area continued even after the expiry of the Act. Thus, the protection to
the tenants in the Doiwala area also continued and was in force on the
1st of October, 1972, when the suit was filed. The protection of the
tenants under the 1947 Act continued throughout and in any case up to F
the issue of the notification dated 23rd of January, 1973, under the Act
No. XIII of 1972. It made no difference that the new Act of 1972 was
specifically applicable to Doiwala town area by the aforesaid notification.
As long as there was nothing inconsistent in the notification dated 31st
March, 1949 with the re-enacted provisions of the Act of 1972, the G
notification continued in force by virtue of Section 24 of the U.P. General
Clauses Act, 1904.

13. Thus, it was submitted that at all times, and particularly on
the date when the notice was issued on the 19th of September, 1972, and

A the date when the suit for eviction was filed on the 1st of October, 1972, the appellants' tenancy in the Doiwala town area was protected by the notification issued under Act No. III of 1947. The notice issued by the respondent-landlord terminating the tenancy under Section 106 of the Transfer of Property Act was not valid and hence, the suit filed on the basis of such a notice was not tenable.

B

Applicability of U.P. Act No. III of 1947 to Doiwala Area

C 14. It is clear from sub-section (2) of Section 1 of the Act of 1947 that it extended to the whole of the erstwhile United Provinces and applied to every municipal area, cantonment area and notified area as per the provincial government notification in the official gazette. Undisputedly, the Governor declared that the provisions of Section 2, 3(a), 4, 5, 6, 8, 11, 12 and 16 of the Act shall apply to Doiwala town located in Dehradun by a notification dated 31st March, 1949 because this notification has never been expressly repealed.

D **Whether the notification dated 31st March, 1949 continued by virtue of Section 24 of the U. P. General Clauses Act, 1904.**

15. The question whether the notification dated 31st March, 1949 continued to exist even after the Act was repealed upon the reenactment of the Act of 1972 may be considered.

E

Section 24 of the U.P. General Clauses Act, 1904:-

F “24. Continuation of appointments, notifications, orders, etc., issued under enactments repealed and re-enacted. – Where any enactment is repealed and re-enacted by an [Uttar Pradesh] Act, with or without modification, then, unless it is otherwise expressly provided, any appointment, [or statutory instrument or form], made or issued under the repealed enactment, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment, [or statutory instrument or form] made or issued under the provisions so re-enacted.”

G

(emphasis supplied)

H 16. A plain reading of the above provision suggests that any statutory instrument (which a notification is) issued under the repealed enactment continues in force as if it were issued under the re-enacted

provisions to the extent that it is not inconsistent with the re-enacted provisions. Such continuance exists till the statutory instrument is superseded by a statutory instrument issued under the re-enacted provisions. A

17. It is therefore necessary; to see whether the notification dated 31st March, 1949, issued under the Act of 1947 is inconsistent with the re-enacted provisions of the Act of 1972. Obviously, if the 1949 notification cannot stand along with the re-enacted provisions and is inconsistent with them, it cannot be said to have been continued in force by virtue of Section 24 of the U. P. General Clauses Act, 1904. B

18. The Governor of the erstwhile United Provinces, through the said notification, simply declared that the provisions of Sections 2, 3(a), 4, 5, 6 etc. shall apply to Doiwala town in Dehradun district. The effect of this notification thus, was that the protection to the tenants offered by Section 3 (a) i.e. the restrictions on eviction, applied to Doiwala town. C

19. We find nothing inconsistent between the protection accorded to the tenants under the Act of 1947 as applied to Doiwala town by the notification dated 31st March, 1949, and the protection accorded to the tenants in the re-enacted provision of the Act of 1972, both of which regulated the eviction of tenants in the whole of Uttar Pradesh. Section 21 of the later act provided the same restrictions on the eviction of tenants on specified grounds that Section 3 (a) of the 1947 Act did. Thus, there is no inconsistency whatsoever found between the two provisions. We also, do not find any express provision to the contrary in the subsequent enactment. D

20. The provisions of an Act, and a conditional legislation such as a notification, belong to a different order of things. A statutory instrument (i.e. the notification) itself does not enact the protection to the tenants. The Act of 1947 does that. The notification merely makes the enactment applicable to the Doiwala area. Apparently the purpose of the re-enacted provision is, *inter alia*, to protect the tenants from eviction, except on special grounds. Nothing in the Act shows that such a protection was intended to be removed from any area or for that matter, the Doiwala area. In fact, the contrary is clear from the fact that a notification expressly applying the re-enacted provisions to the Doiwala area was issued on the 21st of March, 1973. E

F

G

H

A Thus, there can be no inconsistency between the notification applying the Act to the Doiwala area, and the re-enacted provisions of the Act unless the Act of 1972 clearly expresses an intention to remove the protection accorded to the tenants from an area.

B 21. Section 24 of the General Clauses Act, 1904 clearly provides that a statutory instrument issued under a repealed enactment shall continue in force and be deemed to have been made or issued under the re-enacted provisions unless

(a) the re-enacted provision expressly provides otherwise

or

C (b) it is superseded by a statutory instrument made under the re-enacted provision

D The section further provides that the extent to which the statutory instrument under the repealed enactment shall continue is “so far as it is not inconsistent with the re-enacted provisions.”

E 22. We find that none of the conditions which derogate from the continuation of the notification exist in the present case. There is no express provision to the contrary, there is no supersession by any statutory instrument under the re-enacted provisions and there is nothing inconsistent in the continuance of the notification with any of the re-enacted provisions.

F 23. At this stage, it is apposite to consider the central purpose of the General Clauses Act in relation to a statute. In *The Chief Inspector of Mines and Anr vs. Lala Karam Chand Thapar Etc.*², this Court stated its purpose as follows:-

G “...it will be profitable to remember that the purpose of the General Clauses Act is to place in one single statute different provisions as regards interpretations of words and legal principles which would otherwise have to be specified separately in many different acts and regulations. Whatever the General Clauses Act says, whether as regards the meanings of words or as regards legal principles, has to be read into every statute to which it applies.”

H 24. The decision of this Court in *The State of Bombay vs.*

²(1962) 1 SCR 9

*Pandurang Vinayak Chaphalkar and Ors*³, throws a light on the present case. The Building Control Ordinance, enacted in 1948 empowered the provincial Government to extend its provisions to any other area as may be specified by notification. A notification was issued on the 15th of January, 1948 extending the provisions of the Ordinance to Ratnagiri district.

The aforementioned Ordinance was repealed by an Act which contained a provision empowering the State Government to issue a notification to extend the Act to any other specified area. The Act provided that the Bombay General Clauses Act would apply to the repeal as if the Ordinance were an enactment.

The respondent started constructing a cinema at Ratnagiri district on the 15th of August, 1948, after the commencement of the Act. Since the district of Ratnagiri was not specified in the Schedule to the Act, the respondent assumed that the Act did not apply to Ratnagiri. As a result, the construction was carried out without obtaining the permission of the Controller.

The High Court acquitted the respondent, and the State preferred an appeal to this Court. This Court held that, by virtue of the repealing provision and Section 25 of the Bombay General Clauses Act, 1904 which is in *pari materia* with the provisions of the U.P. General Clauses Act, 1904, the notification issued under the Ordinance continued in force under the Act (XXXI of 1948). Therefore, the provisions of the Act stood extended to the other areas as indicated in the notification. The appeal was allowed and the judgment of the High Court was set aside.

25. We find that the ratio in the above case squarely applies to the present case. An identical notification extending the provisions of an earlier enactment to an area was issued through an Ordinance. Though the repealing Act was not specifically extended to that area, it was held that the notification under the earlier enactment continued in force under the new enactment by virtue of the General Clauses Act, 1904.

26. In *The Chief Inspector of Mines* case (supra), the question that fell for consideration was whether or not the regulations framed under the Mines Act, 1923 (for short, "the 1923 Act") continued in force after its repeal by the Mines Act, 1952. The accused was prosecuted for the violation of the regulations framed under the 1923 Act. The

³(1953) 4 SCR 773

A appellants applied for the quashing of the criminal proceedings on the ground that they were prosecuted for the breach of the regulations that had ceased to exist by the repeal of the Mines Act, 1923. The regulations were “as if enacted in this Act”, and therefore, repealed along with the 1923 Act.

B This Court held that though the regulations were a part of the 1923 Act for some purposes, but for the purpose of continuity of existence they would not be considered a part of the Act:-

C “... even though the Act is repealed, the regulation will continue to exist, in accordance with the provisions of Section 24 of the General Clauses Act 1904.”⁴

Section 24 was given full effect for holding that the regulations or rules framed under a repealed law would continue in force in spite of the repeal. Expounding on the purpose of Section 24 of the General Clauses Act, 1904, the Court held:-

D “One may pause here to remember that regulations framed under an Act are of the very greatest importance. Such regulations are framed for the successful operation of the Act. Without proper regulations, a statute will often be worse than useless. When an Act is repealed, but re-enacted, it is almost inevitable that there will be some time lag between the re-enacted statute coming into force, and regulations being framed under the re-enacted statute. However efficient the rule making authority may be, it is impossible to avoid some hiatus between the coming into force of the re-enacted statute and the simultaneous repeal of the old Act, and the making of regulations. Often, the time lag would be considerable. Is it conceivable that any legislature, in providing that regulations made under its statute will have effect as if enacted in the Act, could have intended by those words to say that if ever the Act is repealed and re-enacted (as is more than likely to happen sooner or later), the regulations will have no existence for the purpose of the re-enacted statute, and thus the re-enacted statute, for some time at least, will be in many respects, a dead letter.”⁵

⁴Page 19, (1962) 1 SCR 9

⁵Page 20, (1962) 1 SCR 9

27. We are in respectful agreement with the above observations. Applying the said observations to the present case, it must be held that the notification under the 1947 Act continued in spite of its repeal and the enactment of the 1972 Act. It cannot be said that in the hiatus between the repeal of the 1947 Act and the issuance of a notification applying the 1972 Act to the Doiwala area, the Legislature intended that the tenants had no protection from eviction and there was an unrestricted right to evict them.

28. This Court construed Section 24 of the General Clauses Act 1904, in a similar way in *Neel alias Niranjan Majumdar vs. The State of West Bengal*⁶. It was held that though the offence of the possession of a sword would allege to have been committed in 1970, i.e. after the repeal of the Arms Act, 1878, the notification dated 19th of March, 1923 issued under the repealed Arms Act of 1878 would continue in force and would be deemed to have been enacted under the new Act by virtue of Section 24 of the General Clauses Act, 1904.

29. This Court has taken a concurrent view in *State of Punjab vs. Harnek Singh*.

30. In the result, we hold that the old Act, i.e. the Act No.III of 1947 applied to the Doiwala area by virtue of notification dated 31st of March, 1949, when the suit for the eviction of the appellant was filed. The suit is untenable for the want of permission under the provisions of the U.P. Act No. XIII of 1972 and is liable to be dismissed. However, having heard the learned counsels for both sides on the point, and in view of the circumstances of this case, as well as in the interest of justice, we direct that the appellant-tenant shall hand over possession of the premises to the respondent after a period of three years from today. The premise admittedly belongs to the respondent, which he *bona fide* needs after the said period. Till the time the appellant hands over the possession to the respondent, the appellant shall pay a monthly rent of Rs.4,000/- to the respondent.

Accordingly, the appeal is disposed off.

Kalpana K. Tripathy

Appeal disposed of.

⁶(1972) 2 SCC 668

⁷(2002) 3 SCC 481