NANAKRAM ETC.

v.

KUNDALRAI ETC.

APRIL 29, 1986

[R.S. PATHAK, V. BALAKRISHNA ERADI AND R.B. MISRA, JJ.]

Landlord and tenant - Central Provinces and Berar Letting of Houses and Rent Control Order 1949, clauses 22, 23, 24, 28 and 30 read with section 23 of the Contract Act, 1872 - Whether a lease concluded between a landlord and a tenant in contravention of clause 22 of the Rent Control Order can be assailed by the landlord as a void transaction in a proceeding between the parties to the lease - Whether the Notification under clause 30 retrospective - Concurrent findings of the Courts below cannot be interfered with under Article 136 of the Constitution.

Under clause 22(1) of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 every landlord of a house situated in an area to which those provisions extend is required by the statute to give intimation of a vacancy to the Deputy Commissioner. Clause 22(1) declares that the landlord shall not let or occupy the house except in accordance with clause 23. Clause 22(2) provides that no person shall occupy a house except under an order under clause 23(1) or clause 24 or on an assurance from the landlord that the house is being permitted to be occupied in accordance with clause 23(2). Clause 23 provides that the Deputy Commissioner may, within fifteen days from the date of receipt of the intimation of a vacancy, order the landlord to let the vacant house to any person holding an office of profit under the Union or State Government or to a displaced person or to an evicted person and thereupon, notwithstanding any agreement to the contrary, the landlord is obliged to let the house to such person and place him in possession thereof. If the landlord states that he needs the house for his own occupation he must satisfy the Deputy Commissioner in that behalf. The clause provides further that if no order is passed and served upon the landlord within the period mentioned in clause 23(1), it is open to the landlord to let the vacant house to any person.

A Clause 28 empowers the Deputy Commissioner to take or cause to be taken such steps and use or cause to be used such force, as may be reasonably necessary for the purpose of securing compliance with, or for preventing or rectifying any contravention of, the Rent Control Order. Clause 30 empowers the State Government to exempt, by Notification in the official Gazette, any house or class of houses or any person or class B of persons from all or any of the provisions of the Rent Control Order. On October 24, 1968 a Notification was issued under clause 30 exempting from all the provisions of Chapter III of the Rent Control Order any house used for a non-residential purpose, if it was constructed before January 1, 1967.

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In both the Civil appeals the landlords moved applications before the Deputy Commissioner concerned to declare the tenancy lease entered into by them with their respective tenants as void in as much they were created in violation of clauses 22 and 23 of Chapter III of the Rent D Control Order. The appellant-tenants who have lost their defence pleas have come up in appeals by special leave.

Allowing the appeals, the Court,

HELD: 1. Nowhere does the Central Provinces and Berar E Letting of Houses and Rent Control Order, 1949 which is **pari materia with the U.P. Act** mandate that the Deputy Commissioner must eject a person who has entered into possession of a house in violation of clause 22. If upon a view of the circumstances prevailing then, the Deputy Commissioner takes no action in the matter, there is no reason why the lease between the F landlord and the tenant, although inconsistent with clause 22, should not be binding as between the parties thereto. It is not a void transaction. There is nothing in the Rent Control Order declaring it to be so. Now if the lease is not void then it is not open to either party to avoid the lease on the ground that it is inconsistent with clause 22. The parties G would be bound, as between them, to observe the conditions of the lease, and it cannot be assailed by either party in a proceeding between them. [849 C-E]

Murlidhar Agarwal and Anr. v. State of U.P. & Ors., [1975] 1 S.C.R. 575 followed.

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Udhoo Dass v. Prem Prakash and Anr., A.I.R. [1964] Allahabad 1 approved. A

Waman Shrinivas Kini v. Ratilal Bhagwandas & Co., [1959] Supp. 2 S.C.R. 217 distinguished.

2. Ex facie the terms of the Notification are prospective only. There is nothing to suggest that they operate retrospectively also. It is true that they refer to houses constructed before January 1, 1967, but that is by way of description only, in order to define the category of houses covered by the operation of the exemption conferred by the Notification. Words used merely to define the subject matter of the exemption should not be confused with the dimension of time during which the exemption operates. Therefore, the Notification cannot be construed to be retrospective in operation and, therefore, the tenancy created in favour of the tenant in CA 5317 of 1983 with effect from October 1, 1968 is exempted from the operation of clause 22 of the Rent Control Order. [850 A-C; 849 G] B C D

3. A concurrent finding of fact that a vacancy arose in November 1961 in Civil Appeal 1200 of 1979 and a tenancy was created by the respondent landlord in favour of the appellant-tenant cannot be interfered with, under Article 136 of the Constitution, by the Supreme Court. [850 D] E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5317 of 1983.

From the Judgment and Order dated 22.11.1982 of the Bombay High Court in Writ Petition No. 1043 of 1982. F

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Civil Appeal No. 1200(N) of 1979.

From the Judgment and Order dated 1/2.3.1979 of the Bombay High Court in Writ Petition No. 1043 of 1982. G

V.A. Bobde, Ms. A. Chauhan and A.K. Sanghi for the Appellants in C.A. No. 5317 of 1983.

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M.N. Phadke, J.D. Jain and V.N. Phadke for the Respondent in C.A. No. 5317 of 1983.

P.H. Parekh and Ms. Lata Krishnamoorthy for the Appellant in C.A. No 1200 of 1979.

M.N. Phadke, N.M. Ghatate and S.V. Deshpande for the Respondent in C.A. No. 1200 of 1979.

The Judgment of the Court was delivered by

PATHAK J. These are two civil appeals by special leave. The question common to these appeals is whether a lease concluded between a landlord and a tenant in contravention of clause 22 of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 (hereinafter referred to as 'the Rent Control Order') can be assailed by the landlord as a void transaction in a proceeding between the parties to the lease?

Civil Appeal No. 5317 of 1983 is concerned with a shop described as Block No. 5 in a non-residential building situated in Dharampeth, Nagpur. The respondent is the landlord and the appellant is the tenant. The building was constructed before January 1, 1967, and the appellant became a tenant from October 1, 1968.

Clause 13 of the Rent Control Order provides that no landlord can determine a lease except with the previous written permission of the Controller, for which he must apply in writing to the Controller. Clause 13(3)(vi) provides that if after hearing the parties the Controller is satisfied that the landlord needs the premises for himself the Controller must grant the landlord permission to determine the lease. On January 19, 1980 the respondent petitioned the Controller for permission on the ground that he required the premises occupied by the appellant as his son wanted to commence business therein.

It may be pointed out at this stage that clause 22 in Chapter III of the Rent Control Order requires :

> "22(1) Every landlord of a house situate in an area to which this Chapter extends, shall -

(a) within seven days from the date of the extension of this chapter, if the house is vacant on such date; or

(b) within seven days from the date on which the landlord becomes finally aware that the house will become vacant or available for occupation by himself or for other occupation on or about a specified date;

give intimation of this fact to the Deputy Commissioner of the district in which the area is included or such other officer as may be specified by him, in the Form given in the Schedule appended to this Order, and shall not let or occupy the house except in accordance with clause 23.

(2) No person shall occupy any house in respect of which this chapter applies except under an order under sub-clause (1) of clause 23 or clause 24 or on an assurance from the landlord that the house is being permitted to be occupied in accordance with sub-clause (2) of clause 23."

Clause 23 provides :

"23. (1) On receipt of the intimation in accordance with clause 22, the Deputy Commissioner may, within fifteen days from the date of receipt of the said intimation, order the landlord to let the vacant house to any person holding an office of profit under the Union or State Government or to a displaced person or to an evicted person and thereupon notwithstanding any agreement to the contrary, the landlord shall let the house to such person and place him in possession thereof immediately, if it is vacant or as soon as it becomes vacant :

Provided that, if the landlord has, in the intimation given under clause 22, stated that he needs the house of his own occupation, the Deputy Commissioner shall if satisfied after due enquiry that the house is so needed, permit the landlord to occupy the same.

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(2) If no order is passed and served upon the landlord within the period specified in sub-clause (1), he shall be free to let the vacant house to any person."

Clause 30 of the Rent Control Order empowers the State Government to exempt, by Notification in the Official Gazette, any house or class of houses or any person or class of persons from all or any of the provisions of the Rent Control Order. On October 24, 1968 a Notification was issued under the said clause 30 exempting from all the provisions of Chapter III of the Rent Control Order any house used for a non-residential purpose if it was constructed before January 1, 1967.

On September 23, 1980 the respondent submitted in writing that the building comprising the premises in question had been constructed for a non-residential purpose prior to January 1, 1967 and the appellant had entered into its tenancy from October 1, 1968, and, therefore as the tenancy had been created in violation of Chapter III of the Rent Control Order it was void and there was no valid relationship of landlord and tenant. The appellant filed his reply stating that Chapter III did not apply to buildings constructed before January 1, 1967 and, therefore, even if no intimation had been given as required by Chapter III the tenancy did not become void. On October 6, 1980 the Controller found that the premises had been constructed prior to January 1, 1967 and the appellant had become a tenant therein for a non-residential purpose from October 1, 1968 and that the premises were exempt from the provisions of Chapter III. He held that the respondent's petition for the grant of permission was maintainable. As regards the respondent's submission that the tenancy was void he held that the plea was premature and could not be sustained without evidence being adduced on the record. Accordingly he directed the parties to lead evidence.

Against the order of the Controller the respondent appealed, and the Appellate Authority allowed the appeal on February 17, 1981 holding that the Notification of exemption operated from October 24, 1968 and the tenancy in favour of the appellant had become void. He observed that at the time when the tenancy was created the provisions of Chapter III were in operation and there was no exemption from such

operation. The appellant filed a review petition contending that the appeal filed by the respondent was not maintainable and could not be entertained by the Appellate Authority. He also questioned the findings on the merits rendered by the Appellate Authority in the appeal. The review petition was rejected on March 2, 1982.

The appellant then filed a writ petition in the Bombay High Court which was dismissed by its judgment and order dated November 22, 1982. The High Court held that the appeal filed by the respondent was maintainable under clause 21(1) of the Rent Control Order, that the exemption provided by the Notification of October 24, 1968 operated prospectively only, that therefore clause 22 in Chapter III was in operation at the time when the tenancy was entered into, and consequently the Appellate Authority was justified in holding that as no intimation was given as contemplated by clause 22 the tenancy was invalid.

In Civil Appeal No. 1200 of 1979 the respondent is the owner of a shop situated at Akola. He instituted a suit for possession of the shop alleging that it was first taken on lease by one Shamji Bhai in 1958 and during the next year it passed into the joint possession of Shamji Bhai and the appellant Kaku Bhai as tenants. Some time after November 1961 the appellant Kaku Bhai alone continued in possession. The respondent contended that the lease in favour of Shamji Bhai in 1958 and thereafter to Kaku Bhai in 1961 were invalid and inoperative inasmuch as they were entered in violation of clause 22 of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 ('the Rent Control Order'), as no intimation was given that the premises had fallen vacant in 1958 when let out to Shamji Bhai nor in 1961 when let out to the appellant Kaku Bhai. Alleging that the appellant Kaku Bhai was in possession not as a tenant but as a mere licencee or a trespasser the respondent claimed possession and mesne profits.The appellant resisted the suit and inter alia pleaded that he was a tenant of the premises, and that having accepted him as tenant it was not open to the respondent to take the plea that the lease was void. The Trial Court held that the lease in favour of Shamji Bhai and also the lease in favour of the appellant were void because intimation of the vacancy had not been communicated to the statutory authority at the

relevant time and, therefore, the appellant must be treated as being in permissive possession as a licencee. The suit was decreed. On appeal the Bombay High Court held that the lease in favour of Shamji Bhai and thereafter the lease in favour of the appellant were hit by clause 22(2) of the Rent Control Order and were, therefore, void. The appeal was dismissed.

The point common to both the appeals is whether it is open to a landlord in a proceeding for permission to terminate the tenancy and for possession of the premises to urge that the lease between the parties is void inasmuch as it was entered in contravention of clause 22 of the Rent Control Order.

It is contended for the appellants in both the appeals that it is not open to the landlord to take such a plea because although the lease may not be binding on the Controller or the Deputy Commissioner it is operative as between the parties and cannot be questioned by either in a proceeding instituted by the one against the other. The appellants rely on **Murlidhar Agarwal and Anr. v. State of U.P. and Ors.**, [1975] 1 S.C.R. 575. That was a case arising under the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (herein after referred to as 'the U.P. Rent Act'). The Court was concerned with the question whether a suit filed by the appellants for recovery of possession, on the basis that the tenancy created by the predecessor-in-interest of the appellants in favour of the respondent had expired, was maintainable in law inasmuch as it was instituted without obtaining the permission of the District Magistrate under s.3(1) of the U.P. Rent Act. The Trial Court decreed the suit, but on appeal the High Court reversed the decree holding that the suit was not maintainable in view of section 3, and in the circumstances, it dismissed the suit. On appeal to this Court, the Court repelled the plea raised by the appellants-landlords that the respondent was not a tenant and held that, therefore, permission was necessary in order to maintain the suit. In taking that view this Court referred to **Udhoo Dass v. Prem Prakash and Anr.**, A.I.R. 1964 Allahabad 1, where a Full Bench of the Allahabad High Court had laid down that a lease made in violation of the provisions of s.7(2) of the U.P. Rent Act would be valid between the parties and would create a relationship of landlord and tenant between them although it

might not bind the Rent Control Officer. This Court did not doubt the correctness of the principle propounded in that case and held that the respondent before them was a tenant. Learned counsel for the respondent invited our attention to **Waman Shriniwas Kini v. Ratilal Bhagwandas & Co.**, [1959] Supp. 2 S.C.R. 217. That was a case under the Bombay Hotel and Lodging Houses Rates Control Act, 1947. The appellant was a tenant of a shop. He let it out to sub-tenants. The respondent-landlord brought a suit for ejectment against the appellant on the ground that s. 15 of the Bombay Hotel and Lodging Houses Rates Control Act, 1947 prohibited sub-letting and that as a landlord he had a right to evict the tenant on that ground. When the matter came in appeal to this Court, the Court held that even though the lease between the parties recognised sub-letting, as the suit was brought not for the enforcement of the agreement but to enforce the right of eviction flowing directly from an infraction of s.15 of the Act, the respondent was entitled to sue for ejectment.

The provisions of clause 22 and clause 23 of Chapter III of the Rent Control Order have been extracted earlier. It is apparent that under clause 22(1) every landlord of a house situated in an area to which those provisions extend is required by the statute to give intimation of a vacancy to the Deputy Commissioner. Clause 22(1) further declares that the landlord shall not let or occupy the house except in accordance with clause 23. Clause 22(2) provides that no person shall occupy a house except under an order under clause 23(1) or clause 24 or on an assurance from the landlord that the house is being permitted to be occupied in accordance with clause 23(2). Clause 23 provides that the Deputy Commissioner may, within fifteen days from the date of receipt of the intimation of a vacancy, order the landlord to let the vacant house to any person holding an office of profit under the Union or State Government or to a displaced person or to an evicted person and thereupon, notiwithstanding any agreement to the contrary, the landlord is obliged to let the house to such person and place him in possession thereof. If the landlord states that he needs the house for his own occupation he must satisfy the Deputy Commissioner in that behalf. The clause provides further that if no order is passed and served upon the landlord within the period mentioned in clause 23(1), it is open to the landlord to let the vacant house to any

person. Clause 28 empowers the Deputy Commissioner to take or cause to be taken such steps and use or cause to be used such force, as may be reasonably necessary for the purpose of securing compliance with, or for preventing or rectifying any contravention of, the Rent Control Order.

Now, in deciding **Murlidhar Agarwal,** (supra) this Court approved of the proposition of the law laid down by the Allahabad High Court in **Udhoo Dass,** (supra). The High Court had the provisions of s. 7 and s. 7A of the U.P. Rent Act before it. Section 7 required the landlord to report to the District Magistrate if his house had fallen vacant or was about to fall vacant, and thereupon the District Magistrate was empowered to direct the landlord to let the premises to a person specified in the order. The High Court dealt with the question whether a lease between the landlord and another person in violation of the order of the District Magistrate would be a valid lease as between the parties thereto. It held that such a lease would be valid between the parties. It would not, however, be binding on the District Magistrate. That it would not be binding on the District Magistrate was evidenced by the power conferred upon him under s. 7A(1) of the U.P. Rent Act to take proceedings for the eviction of such tenant. Section 7A(1) provided that if the vacancy of an accommodation was not reported or a person occupied an accommodation in contravention of an order issued under s. 7(2) the District Magistrate could require him to show cause why he should not be evicted from it. If he failed to show cause the District Magistrate could direct him to vacate the accommodation and if he failed to vacate the District Magistrate could use force to evict him. The power conferred on the District Magistrate to take proceedings for the eviction of such tenant was discretionary. It was open to the District Magistrate not to exercise the power if there was undue delay or if for other good reason he found it inexpedient to do so. If he did not exercise the power conferred by s. 7A(1), the lease between the landlord and the other person would continue to subsist and that other person would continue to enjoy the status of a tenant. It would be a valid lease. It could not be regarded as a void lease. In a case under the Rent Control Order, with which these appeals are concerned, the position appears to be materially similar. The landlord is prohibited by clause 22(1) from occupying the house or granting a lease except in

accordance with clause 23. There is a prohibition under clause 22(2) on any other person seeking to occupy the house, except again in accordance with clause 23. In clause 23 it is the Deputy Commissioner who will order the landlord to let the vacant house to a person indicated by him, a person who falls in one of the categories specified in the clause or, if he is satisfied, he may permit the landlord himself to occupy the house. As was the position under the U.P. Rent Act, so also under the Rent Control Order, the Deputy Commissioner has power under clause 28 to take steps and use force for the purpose of securing compliance with, or for preventing or rectifying, any contravention of the Rent Control Order. Clause 28 speaks of a power conferred on the Deputy Commissioner in that behalf. Nowhere does the Rent Control Order mandate that the Deputy Commissioner must eject a person who has entered into possession of a house in violation of clause 22. If upon a view of the circumstances prevailing then the Deputy Commissioner takes no action in the matter, there is no reason why the lease between the landlord and the tenant, although inconsistent with clause 22, should not be binding as between the parties thereto. It is not a void transaction. There is nothing in the Rent Control Order declaring it to be so. Now if the lease is not void then it is not open to either party to avoid the lease on the ground that it is inconsistent with clause 22. The parties would be bound, as between them, to observe the conditions of the lease, and it cannot be assailed by either party in a proceeding between them.

On this view alone both the appeals must be allowed.

In Civil Appeal No. 5317 of 1983 an alternative point has been raised on behalf of the appellant. It is urged that although the Notification dated October 24, 1961 exempts from the provisions of Chapter III of the Rent Control Order a house used for a non-residential purpose if it is constructed before January 1, 1967 the Notification must be construed to be retrospective in operation, and that, therefore, the tenancy created in favour of the appellant with effect from October 1, 1968 is exempted from the operation of clause 22 of the Rent Control Order. In other words, because of the exemption the tenancy could not be regarded as violating the provisions of clause 22 and no question could arise of the tenancy being void on that account. It is not possible to

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accept the contention. Ex facie the terms of the Notification are prospective only. There is nothing to suggest that they operate retrospectively also. It is true that they refer to houses constructed before January 1, 1967, but that is by way of description only, in order to define the category of houses covered by the operation of the exemption conferred by the B Notification. Words used merely to define the subject matter of the exemption should not be confused with the dimension of time during which the exemption operates. This point must fail.

In Civil Appeal No. 1200 of 1979 another point raised on C behalf of the appellant is that no vacancy of the premises took place in 1961 when the appellant was in possession as a tenant. The case is that the appellant was in joint possession with Shamji Bhai before that, and the tenancy continued on Shamji Bhai surrendering his tenancy rights in November 1961. The Trial Court and the High Court have concurrently held as a D finding of fact that a vacancy arose in November 1961 and a tenancy was created by the respondent in favour of the appellant on that occasion. We do not propose to interfere with the finding.

In the result, on the view taken by us on the first point E in each of the two appeals, the appeals are allowed. In Civil Appeal No. 5317 of 1983, we set aside the appellate order dated February 17, 1981 of the Appellate Authority under the Rent Control Order and the judgment and order of the Bombay High Court in the writ petition filed by the appellant insofar as they proceed on the finding that the lease is void. In F Civil Appeal No. 1200 of 1979 we set aside the judgment and decree of the Bombay High Court and dismiss the suit filed by the respondent. The paries in each appeal will bear their costs.

S.R. Appeals allowed.