R.N. GOSAIN

v.

YASHPAL DHIR

OCTOBER 23, 1992

[K. JAYACHANDRA REDDY AND S.C. AGRAWAL, JJ.]

Constitution of India, 1950—Article 136—Special leave petition—Whether entertainable, when petitioner (tenant) avails protection from eviction on the basis of undertaking.

East Punjab Urban Rent Restriction Act, 1949—Section 13A—Eviction of tenant—High Court's order—Protection from eviction availed by tenant under an undertaking—Invoking Supreme Court under Article 136 of the Constitution assailing High Court's judgment—Legality of.

A residential house was let out to the petitioner by the respondent. The respondent was initially employed as Accounts Officer with the Finance Department of the Government. In 1969, he went on deputation with the Haryana Agricultural University. While he was employed on the post of Comptroller in the University he retired from service with effect from February 28, 1991.

Claiming to be a "specified landlord" within the meaning of Section 2(hh) of the East Punjab Urban Rent Restriction Act, 1949, the respondent moved a petition seeking eviction of the petitioner under section 13A of the Act before the Rent Controller.

The petition was dismissed by the Rent Controller on the view that the respondent did not fall within the ambit of the definition of "specified landlord", since he failed to show that he was holding or had held an appointment in a public service or post in connection with the affairs of the Union or of the State.

The respondent filed a revision petition before the High Court under section 18-A(8) of the Act, which was allowed by the High Court on March 6, 1992. The High Court held that the respondent, at the time of his retirement from the post of Comptroller in the University, was holding an appointment in connection with the affairs of the State and hence he was

A a specified landlord within the meaning of section 2(hh) of the Act and that the respondent had fully satisfied the conditions as contained in section 13-A of the Act and he was entitled to recover the possession of the premises in dispute from the petitioner. The High Court allowed one month's time for the petitioner to vacate the premises subject to his B paying the entire arrears of rent within 15 days from the date of the order and filing an undertaking that he would hand over the vacant possession of the premises on the expiry of the aforesaid period.

On March 16, 1992, the petitioner moved a petition in the High Court under section 151 CPC seeking three months' time to vacate the C house and for waiving the requirement of filing of an undertaking. The High Court rejected the petition.

Thereafter, the petitioner submitted an undertaking dated March 20, 1992 before the Rent Controller wherein the petitioner referred to the direction contained in the order of the High Court dated March 6, 1992. D

On March 21, 1992, the petitioner filed the special leave petition under Article 136 of the Constitution in this Court and succeeded to get an order staying dispossession on March 26, 1992.

E In response to the notice issued on the Special Leave Petition, the respondent filed a counter-affidavit raising an objection that in view of the undertaking given by the petitioner, the jurisdiction of this Court under Article 136 of the Constitution could not be invoked.

The respondent-landlord submitted that in view of petitioner- F tenant's having taken the benefit of direction contained to the order of the High Court allowing him one month's time to vacate the premises on his filing an undertaking that vacant possession of the premises would be handed over on the expiry of the period and his having submitted a written undertaking in accordance with the direction, the petitioner was precluded G from assailing the judgment of the High Court by invoking the jurisdiction of this Court under Article 136 of the Constitution.

The petitioner-tenant submitted that he did not take any undue advantage by giving the undertaking; that prior to the undertaking, he had moved an application for extension of time before the High Court wherein H he had clearly indicated that he intended to file a special leave petition in

this Court against the order of the High Court dated March 6, 1992 and that it was also expressly stated in the undertaking filed in the Court wherein it is mentioned that the undertaking was subject to his right to file the special leave petition in this Court against the order of eviction. A

Dismissing the special leave petition, this Court, B

HELD : 1.01 Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument. [263-F]

1.02 The petitioner, having given an undertaking in pursuance to the directions given by the High Court in the judgment dated March 6, 1992 and having availed the protection from eviction on the basis of the said undertaking, cannot be permitted to invoke the jurisdiction of this Court under Article 136 of the Constitution and assail the said judgment of the High Court. [264-H] C

D

1.03 The statement in the undertaking, that it was subject to the rights of the petitioner to file special leave petition in this Court against the order of eviction, does not have any effect on the legal consequence flowing as a result of the filing of the undertaking by the petitioner. [263-D]

Verschures Creameries Ltd. v. *Hull and Netherlands Steamship Co. Ltd.*, 1921 (2) K.B. 608 at p. 612; *Thacker Hariram Motiram* v. *Balkrishan Chatbrabhu Thacker & Ors.*, [1989] Supp. 2 SCC 655 and *Vidhi Shanker* v. *Heera Lal* 1987 Supp. SCC 200; *Ramchandra Jai Ram Randive* v. *Chandanmal Rupchand & Ors.*, [1987] Supp. SCC 254, referred to. E

Halsbury's *Laws of England,* 4th Edn. Vol. 16, para 1508, referred to. F

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 4325 of 1992.

From the Judgment and Order dated 6.3.1992 of the Punjab and Haryana High Court in Civil Revision No. 2830 of 1991. G

Dr. A.M. Singhvi and Ms. Kirti Misra for the Appellant.

D.V. Sehgal, S.M. Sarin, P.N. Puri, Ranbir Singh Yadav and G.K. Bansal for the Respondent. H

A The Judgment of the Court was delivered by

S.C. AGRAWAL, J. This petition for special leave to appeal arises out of proceedings for eviction initiated by the respondent (landlord) against the petitioner (tenant) under section 13A of the East Punjab Urban B Rent Restriction Act, 1949 (hereinafter referred to as 'the Act'), as amended by Act No. 2 of 1985.

The proceedings relate to a residential house in Chandigarh which was let out to the petitioner by the respondent. The respondent was initially employed as Accounts Officer with the Finance Department of the C Government of Haryana. In 1969, he went on deputation with the Haryana Agricultural University (hereinafter referred to as 'the University'). His services were transferred to the University by the Government of Haryana with effect from November 1, 1975, and while he was employed on the post of Comptroller in the University he retired from service with effect from D February 28, 1991. Claiming to be a 'specified landlord' within the meaning of section 2(hh) of the Act, the respondent moved a petition seeking eviction of the petitioner under section 13A of the Act before the Rent Controller, Chandigarh. The said petition was dismissed by the Rent Controller by order dated August 5, 1991 on the view that the respondent did not fall within the ambit of the definition of 'specified landlord' since E he had failed to show that he was holding or has held an appointment in a public service or post in connection with the affairs of the Union or of the State. The respondent filed a revision petition before the High Court under section 18-A(8) of the Act which was allowed by the High Court by judgment dated March 6, 1992. The High Court held that the respondent, F at the time of his retirement from the post of Comptroller in the University, was holding an appointment in connection with the affairs of the State and hence he is a specified landlord within the meaning of section 2(hh) of the Act. The High Court further found that the respondent had fully satisfied the conditions as contained in section 13-A of the Act and he was entitled to recover the possession of the premises in dispute from the petitioner. G Allowing the revision, the High Court set aside the order of the Rent Controller and accepted the petition filed by the respondent under section 13-A of the Act for ejectment of the petitioner. The High Court further directed as under :

H "However, the respondent is allowed one month's time to

vacate the premises provided he pays the entire arrears of rent within 15 days from today, and also files an undertaking with the Court of the Rent Controller to the effect that he shall hand over the vacant possession of the premises on the expiry of aforesaid period." A

On March 16, 1992, the petitioner moved a petition in the High Court under section 151 CPC seeking three months, time to vacate the house and for waiving the requirement of filing of an undertaking. The said petition was rejected by the High Court by order dated March 18, 1992. Thereafter, the petitioner submitted an undertaking dated March 20, 1992 before the Rent Controller wherein the petitioner after referring to the direction contained in the order of the High Court dated March 6, 1992 gave the following undertaking : B C

"That the respondent hereby gives undertaking that he will vacate the premises and shall handover the vacant possession of the premises on the expiry of one month from 6.3.92 as per the order of Hon'ble High Court, subject to his rights for filing SLP in the Hon'ble Supreme Court against the order of eviction. The respondent has already sent draft for the rent for the month of March 1992 to the petitioner and he is not in arrears of rent." D E

On March 21, 1992, the petitioner filed the special leave petition under Article 136 of the Constitution in this Court. On the said petition the following order was passed on March 26, 1992 :

"To come up in normal course. In the meantime, no dispossession to be effected." F

On April 9, 1992, an order was passed in the following terms :

"Issue notice returnable within two weeks. In the meantime, stay of eviction to continue." G

In response to the said notice, the respondent filed a counter-affidavit on April 18, 1992 wherein an objection has been raised that in view of the undertaking given by him the petitioner cannot invoke the jurisdiction of this Court under Article 136 of the Constitution. H

A Shri D.V. Sehgal, the learned senior counsel appearing for the respondent, has submitted that in view of his having taken the benefit of direction contained in the order of the High Court allowing him one month's time to vacate the premises on his filing an undertaking that he shall hand over vacant possession of the premises on the expiry of aforesaid B period and his having submitted a written undertaking in accordance with the said direction, the petitioner is precluded from assailing the judgment of the High Court by invoking the jurisdiction of this Court under Article 136 of the Constitution. Shri Sehgal has urged that the fact that the petitioner has qualified his undertaking by using the words "subject to his C rights for filing SLP in the Hon'ble Supreme Court against the order of eviction" would not alter the position. In support of his aforesaid submission Shri Sehgal has placed reliance on the decisions of this Court in *Thacker Hariram Motiram* v. *Balkrishan Chatbrabhu Thacker & Ors.*, [1989] Supp. 2 SCC 655; *Vidhi Shanker* v. *Heera Lal,* [1987] Supp. SCC 200 and *Ramchandra Jai Ram Randive* v. *Chandanmal Rupchand & Ors.*, [1987] D Supp. SCC 254.

Dr. A.M. Singhvi, the learned counsel appearing for the petitioner, has, however, laid stress on the fact that the undertaking had to be given by the petitioner in the peculiar circumstances arising on account of this E Court being closed due to vacations from March 16, 1992 to March 20, 1992. Dr. Singhvi has submitted that the petitioner has not taken any undue advantage by giving the undertaking inasmuch as before giving the undertaking, he had moved an application for extension of time before the High Court wherein he had clearly indicated that he intended to file a special F leave petition in this Court against the order of the High Court dated March 6, 1992 and this was also expressly stated in the undertaking filed in the Court wherein it is mentioned that the undertaking was subjected to his right to file the special leave petition in this Court against the order of eviction. Dr. Singhvi has urged that in view of the aforesaid facts and circumstances the decisions on which reliance has been placed by Shri G Sehgal would have no application to the present case.

In view of the judgment of the High Court allowing the petition for eviction filed by the respondent, the petitioner was liable to be evicted from the premises forthwith. Under the directions given by the High Court, the H petitioner could continue in occupation of the premises for a period of one

month on his (i) paying the entire arrears of rent within 15 days from the date of the judgment; and (ii) filing an undertaking with the court of Rent Controller to the effect that he shall hand over the vacant possession of the premises on the expiry of the period of one month. The petitioner made an effort to obtain extension of time for vacating the premises without furnishing the undertaking and he filed a petition for the purpose before the High Court. The said petition was, however, dismissed by the High Court. Having failed in his attempt to obtain extension of time for vacating the premises without furnishing an undertaking the petitioner had two options open to him, (i) to avail the protection from eviction from the premises for a period of one month by filing an undertaking as directed, or (ii) not to avail the said protection and run the risk of immediate eviction. The petitioner chose the first option. In order to avail the protection from eviction from the premises for a period of one month he filed the requisite undertaking in the court of the Rent Controller within the period of 15 days prescribed under the directions of the High Court. The statement in the undertaking that it was subject to the rights of the petitioner to file special leave petition in this Court against the order of eviction, does not, in our view, have any effect on the legal consequences flowing as a result of the filing of the undertaking by the petitioner. By furnishing the said undertaking the petitioner elected to avail the protection from eviction from the premises and he enjoyed the said protection till the passing of the order by this Court on March 26, 1992, staying dispossession of the petitioner. Having elected to avail the protection from eviction under the order dated March 6, 1992 passed by the High Court, by filing the requisite undertaking, the petitioner cannot be permitted to assail the said order.

Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid any thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage". [See : *Verschures Creameries Ltd.* v. *Hull and Netherlands Steamship Co. Ltd.*, (1921) 2 R.B. 608, at p.612, Scrutton, L.J]. According to Halsbury's *Laws of England,* 4th Edn., Vol. 16, "after taking an ad-

A vantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside". (para 1508).

In *Thacker Hariram Motiram* v. *Balkrishan Chatbrabhu Thacker & Ors.* (supra), this Court was dealing with a similar situation. The High B Court, while deciding the second appeal in an eviction matter gave the appellant (tenant) one year's time subject to his giving an undertaking within a period of three weeks stating that vacant possession would be handed over within the aforesaid time. The appellant gave an undertaking in accordance with the said terms wherein he undertook that he would C vacate and give vacant possession of the suit premises by December 31, 1985, i.e., to say after one year if "by that time no stay order from the Supreme Court is received as I intend to file an appeal in the Supreme Court". It was held that in view of the said undertaking the petitioner could not invoke the jurisdiction of this Court under Article 136 of the Constitu- D tion and he should abide by the terms of the undertaking, and it was observed :

> "This undertaking filed by the appellant in our opinion is in clear variation with the oral undertaking given to the learned Judge which induced him to give one year's time. E We do not wish to encourage this kind of practice for obtaining time from the court on one plea of filing the undertaking and taking the different stand, in applications under Article 136 of the Constitution." (p.655)

F Similarly in *Vidhi Shanker* v. *Heera Lal* (supra) and *Ramchandra Jai Ram Randive* v. *Chandanmal Rupchand & Ors.* (supra), this Court declined to exercise its discretion under Article 136 of the Constitution in cases where the petitioner had given an undertaking in the High Court and had obtained time to vacate the premises on the basis of such undertaking.

G We are, therefore, of the opinion that the petitioner, having given an undertaking in pursuance to the directions given by the High Court in the Judgment dated March 6, 1992, and having availed the protection from eviction on the basis of the said undertaking, cannot be permitted to invoke the jurisdiction of this Court under Article 136 of the Constitution and H assail the said judgment of the High Court. In that view of the matter, we

do not consider it necessary to deal with the submissions urged by Dr. Singhvi that the respondent, being an employee of the University at the time of his retirement, was not a 'specified landlord' under section 2(hh) of the Act. A

The special leave petition is, accordingly, dismissed but without any orders as to costs. B

V.P.R. Petition dismissed.