

BHOLA NATH VARSHNEY (SINCE DEAD) THROUGH HIS LRS. A

v.

MULK RAJ MADAN

JANUARY 25, 1994

[S. MOHAN AND M.K. MUKHERJEE, JJ.] B

The Uttar Pradesh Buildings (Regulation of Letting, Rent and Evictions Act, 1972—Ss. 2(2), 20(2), 39—Residential premises—Leased out on rent—Suit for eviction—Premises not being 10 years old on date of suit—Exemption from operation of Act—10 years elapsed pending litigation—Applicability of Act—Held, Act does not become applicable merely because 10 years elapsed during pending of suit—For purposes of s. 39, suit must be pending on date of commencement of Act—When Act itself was not applicable, s. 39 would not apply.

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The landlord-appellant, after serving a notice under s. 106 of the Transfer of Property Act, 1982 on the respondent, filed a suit for his eviction in the Court of Small Causes in 1981. His case was that the tenanted building was constructed in 1974 and as 10 years had not elapsed since then, the Uttar Pradesh Buildings (Regulation of Letting Rent and Eviction) Act, 1972 did not apply to it, and if at all, the tenant was not entitled to its benefit since he had not complied with s. 39 of the Act. The trial Court dismissed the suit holding that the Act applied to the building, none of the grounds mentioned in s. 20(2) of the Act was made out; and the tenant not being in arrears of rent was not required to comply with s. 39. The revisional court accepted landlord's case and decreed the suit.

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The respondent tenant filed a petition which was allowed by the High Court, holding that as 10 years elapsed during the pendency of the suit, the Act would apply. Hence the landlord's appeal, by special leave.

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Allowing the appeal setting aside the judgment of High Court and restoring that of the revisional court, this Court

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HELD: 1.1. The Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 has no application to the facts of the instant case. [334-F]

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A 1.2. The law applicable on the date of the institution of the suit alone governs the suit and the mere fact that the statutory period of ten years expires during the pendency of the suit/appeal/revision, the Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 does not become applicable. The suit has to be tried and decided without reference to the Act. [334-D-E]

B *Ramesh Chandra v. III Additional District Judge*, [1992] 1 S.C.C. 751, *Nand Kishore Marwah v. Somundri Devi*, [1987] 4 S.C.C. 382 and *Om Prakash Gupta v. Dig Vijendrapal Gupta*, [1982] 2 S.C.C. 61, relied on.

C *Vineet Kumar v. Mangal Sain Wadhera*, [1984] 3 S.C.C. 352, *Pasupleti Venkateswarlu v. Motor and General Traders*, [1975] 1 S.C.C. 770 and *A.K. Gupta & Sons v. Damodar Valley Corporation*, A.I.R. 1967 S.C. 96, referred to.

D 2.1. In order to attract s. 39 of the Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, the suit must be pending on the date of commencement of the Act, i.e. 15.7.1972. The legislature desired to limit the scope of the application of Ss. 39 and 40, to suits, appeals and revisions pending on the date of commencement of the Act, relating to buildings to which the old Act did not apply and to which the new Act was to apply forthwith and not at a later date. [334-H; 335-C]

E 2.2. In the instant case the suit was filed in 1981, long after the commencement of the Act. Further, when the Act itself was not applicable, s. 39 would not apply. [335-D]

F *Om Prakash Gupta v. Dig Vijendrapal Gupta*, [1982] 2 S.C.C. 61 and *Suresh Chand v. Gulam Chisti*, A.I.R. 1990 S.C. 897, relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1766 of 1986.

G From the Judgment and Order dated 20.11.1985 of the Allahabad High Court in W.P. No. 14149 of 1985.

Ms. S. Goswami for the Appellants.

H P. Swarup, Praveen Swarup and P. Choudhary for the Respondent.

The Judgment of the Court was delivered by

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M.K. MUKHERJEE, J. 1. This appeal by special leave has been filed by the landlord against the judgment and order of the Allahabad High Court allowing the Civil Writ Petition of the respondent-tenant.

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2. After serving a notice in accordance with Section 106 of Transfer of Property Act, the landlord instituted a suit for eviction in the Court of Small Causes, Moradabad on July 23, 1981. He contended that the tenanted building was constructed in 1974 and as ten years had not elapsed since then the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 ('Act' for short) did not apply to it. He further contended that even if it was assumed that the Act applied the tenant was not entitled to its benefits as he has not complied with the requirement of Section 39. In resisting the suit the tenant refuted both the above contentions of the landlord and submitted that as none of the grounds mentioned in sub-section (2) of Section 20 of the Act, on which only a tenant could be evicted, was made out no decree for ejectment could be passed against him.

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3. The trial court dismissed the suit holding that the Act applied to the building and none of the grounds referred to in Section 20(2) was made out. The trial court further held that as the tenant was not in arrears of rent he was not required to deposit rent in terms of Section 39 of the Act to obtain the benefit thereof.

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4. Assailing the above judgment the landlord preferred a revision under Section 25 of the Provincial Small Causes Courts Act which was allowed by the learned Additional District Judge, Moradabad. The learned Judge held that on the date of institution of the suit the building was less than 10 years' old and therefore the Act, and, for that matter, Section 20(2) thereof was not applicable. The learned Judge also held that the benefit of Section 39 was not available to the tenant as he did not deposit the rent, interest and cost in accordance therewith. Accordingly, the learned Judge decreed the suit for eviction and for rent.

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5. Aggrieved by the above judgment and order of the learned Judge, the tenant filed a Civil Writ Petition in the Allahabad High Court. The High Court held that as the suit building completed 10 years of its existence during pendency of the suit, the Act would apply and, therefore, the tenant

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A could be evicted only on one or more grounds mentioned in sub-section (2) of Section 20 of the Act. Since, admittedly, none of the grounds mentioned therein was satisfied the High Court held that the suit was liable to be dismissed. The High Court observed that if compliance of Section 39 was considered essential, although in such a suit it was not, the tenant should have been afforded an opportunity to pay the arrears or it should have been made a part of the decree but eviction should not have been ordered. On the above findings, the High Court allowed the Writ Petition.

B 6. In view of the undisputed fact that the building was constructed in the year 1974 the basic question which requires an answer in this appeal

C is whether the building, which was not ten years' old on the date of the suit and was exempted from the operation of the Act, can be governed by it if ten years elapsed during the pendency of the litigation. To answer this question, in the light of the findings recorded by the learned Courts below, it will be appropriate at this stage to refer to the relevant provisions of the Act. Section 2(2) of the Act, to the extent it is germane for our present purpose, reads as under:

E "2) Except as provided in sub-section (5) of Section 12, sub-section (1-A) of Section 21, Sub-section (2) of Section 24, Section 24-A, 24-B, 24-C or sub-section (3) of section 29, nothing in this Act shall apply to a building during a period of ten years from the date on which its construction is completed."

F 7. Sub-section (1) of Section 20 provides that except as provided in sub-section (2) no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner - save in the limited situations contemplated by the proviso thereof. Sub-section (2) enumerates the grounds on which the tenant can be evicted.

G 8. The other Section relevant for our purpose is Section 39 and the same reads as under:-

H "39. Pending suits for eviction relating to buildings brought under regulation for and first time. In any suit for eviction of a tenant from any building to which the old Act did not apply, pending on the date of commencement of this Act where the tenant within one month from such date of commencement or from the date of his

knowledge of the pendency of the suit, whichever be later, deposits in the Court before which the suit is pending, the entire amount of rent and damages for use and occupation (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine per cent per annum and the landlord's full cost of the suit, no decree for the eviction shall be passed except on any of the grounds mentioned in the proviso to sub-section (2) of Section 20, and the parties shall be entitled to make necessary amendment in their pleadings and to adduce additional evidence where necessary.

Provided that a tenant the rent payable by whom does not exceed twenty-five rupees per month need not deposit any interest as aforesaid."

In interpreting Section 2(2) of the Act in the case of *Om Prakash Gupta v. Dig Vijendrapal Gupta*, [1982] 2 S.C.C. 61, this Court held that there was no ambiguity in the language of sub-section (2) of Section 2 and in the absence of any ambiguity there was no question of taking any external aid for interpreting the same. The learned Judges observed that in plain words the sub-section contemplated that the Act should not apply to a building during a period of ten years from the date on which its construction was completed and that the sub-section nowhere said that the building should have been constructed after the enforcement of the Act. According to the learned Judges the language of sub-section (2) of Section 2 of the Act was not capable of any other interpretation.

9. The applicability of Section 2(2) of the Act again came up for consideration before this Court in the case of *Vineet Kumar v. Mangal Sain Wadhera*, [1984] 3 S.C.C. 352. In interpreting the above sub-section, the Bench first observed that the moment a building became ten years' old to be reckoned from the date of completion, the Act would be applicable; and then posed the question as to whether the Act would be attracted if the building completed ten years during the course of litigation. In answering the same, the Court distinguished its earlier decision in the case of *Om Prakash Gupta*, (supra) on the ground that it was not necessary in that case to deal with the question whether the tenant would be entitled to the benefit of Section 39 of the Act as the building had not become ten years' old when the revision petition was heard and decided by the High Court.

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A The Court next dealt with the argument whether it was required to decide a case on the basis of the cause of action that accrued prior to the date of the institution of the suit and not on a new cause of action. In answering this question the Court first noted its earlier observations made in the case of *Pasupuleti Venkateswarlu v. Motor and General Traders*, [1975] 1 S.C.C. 770 and said:

"Normally amendment is not allowed if it changes the cause of action. But it is well recognised that where the amendment does not constitute an addition of a new cause of action, or raise a new case, but amounts to no more than adding to the facts already on the record, the amendment would be allowed even after the statutory period of limitation. The question in the present case is whether by seeking the benefit of Section 39 of the new Act there is a change in the cause of action."

D The Court then referred to the case of *A.K. Gupta & Sons v. Damodar Valley Corporation*, A.I.R. 1967 S.C. 96 and concluded as follows:—

"The appellant in the present case only seeks the protection of the new Rent Act which became applicable to the premises in question during the pendency of the litigation. We see no reason why the benefit of the new Rent Act be not given to the appellant. Section 20 of the new Rent Act provides a bar to a suit for eviction of a tenant except on the specified grounds as provided in the section. Sub-section (4) of Section 20 stipulates that in any suit for eviction

F on the grounds mentioned in clause (a) to sub-section (2), viz. the arrears of rent, if at the first hearing of the suit the tenant in default pays all arrears of rent to the landlord or deposits in court the entire amount of rent and damages for use and occupation of the building due from him, such damages for use and occupation being calculated at the same rate as rent together with interest thereon at the rate of nine per cent per annum and the landlord's cost of the suit in respect thereof after deducting therefrom any amount already deposited by the tenant under sub-section (1) of Section 30, the Court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground."

On such conclusion the Court set aside the judgment and decree of the A
High Court in so far as it related to eviction.

10. In opposing the instant appeal the learned counsel for the tenant relied primarily upon the judgment in the case of *Vineet Kumar* (supra) to contend that as none of the grounds referred, to in sub-section (2) of Section 20 for eviction of the tenant the appeal was liable to be dismissed. If the case of *Vineet Kumar* (supra) had operated in the field even now, we might have persuaded ourselves to accept the above contention of the tenant but then our attention has been drawn by the learned counsel for the appellant to later judgments of this Court which have dissented from the above. B C

11. In the case of *Nand Kishore Marwah v. Somundri Devi*, [1987] 4 S.C.C. 382, this Court dissented from the view expressed in the case of *Vineet Kumar*, (supra) observing, *inter alia*, that the law laid down in the case of *Om Prakash*, (supra) was binding on them, being a decision of a D Bench of three Judges.

12. Referring to Section 20-of the Act, the Court then observed as under:—

"This is put in Chapter IV with the heading "Regulation and Eviction" and the section starts with title which is printed in bold. "Bar of suit for eviction of tenant except on specified grounds" and again in the wording of the section itself it provides: "No suit shall be instituted for eviction." This clearly indicates that the restriction put under section 20 is to the institution of the suit itself and therefore it is clear that if the provisions of this Act applies then no suit for eviction can be instituted except on the grounds specified in the sub- sections of this section. Keeping in view the language of this section if we examine the provisions contained in sub-section (2) of Section 2 it will be clear that for a newly constructed building the provisions of this Act will not apply for 10 years and therefore so far as the restriction under section 20 is concerned they will not apply and therefore it is clear that within 10 years as provided for in sub-section (2) of Section 2 restriction on the institution of suit as provided for in Section 20 sub-section (2) quoted above will not be applicable and it is thus clear that H G F E

A during the pendency of the litigation even if 10 years expired the restriction will not be attracted as the suit has been instituted within 10 years and therefore restriction as provided for in Section 20 cannot be attracted."

B 13. Lastly, we may refer to the case of *Ramesh Chandra v. III-Additional District Judge*, [1992] 1 S.C.C. 751. In this case also the judgment was delivered by a Division Bench of this Court consisting of three Judges. In negativing a similar contention raised on behalf of the tenant relying upon the case of *Vineet Kumar* (supra) the Court observed:

C "Yet another contention urged by the learned counsel for the tenant on the strength of *Vineet Kumar* (supra) is that inasmuch as the statutory period of ten years expired during the pendency of the suit, the Act became applicable and the suit must be disposed of only in accordance with the provisions of the Act and in particular sub-section (2) of Section 20. This decision has, however, been explained in a subsequent decision in *Nand Kishore Marwah*, (supra) wherein it has been held that the law applicable on the date of the institution of the suit alone governs the suit and the mere fact that the statutory period of 10 years expires during the pendency of the suit/appeal/revision, the Act does not become applicable. It was held that the suit has to be tried and decided without reference to the Act. We are in respectful agreement with the view expressed in *Nand Kishore Marwah* (supra)."

F In view of the law as now laid down by this Court is must be held that the Act has no application to the facts of the instant case. It was however contended by the learned counsel for the tenant that even if the Act did not apply to the suit premises section 39 did. This contention cannot also be accepted having regard to the following observations made in the case of *Om Prakash Gupta* (Supra).

G "Further, in order to attract Section 39 the suit must be pending on the date of commencement of the Act which is July 15, 1972 but the suit giving rise to the present appeal was filed on March 23, 1974 long after the commencement of the Act. There is yet another reason why Section 39 will have no application to the

present case. In view of sub-section (2) of Section 2 of the Act is A not applicable to a building which has not a standing of 10 years and if the Act itself was not applicable, it would be absurd to say that Section 39 thereof would be applicable."

14. The above quoted view has been affirmed by another Division Bench of this Court in the case of *Suresh Chand v. Gulam Chisti*, A.I.R. 1990 S.C. 897, with the following amongst other observations:— B

"It therefore seems to us that the legislature desired to limit the scope of the applicable of Sections 39 and 40 to suits, appeals and revisions pending on the date of commencement of the Act, i.e. 15th July, 1972, relating to buildings to which the old Act did not apply and to which the new Act was to apply forthwith and not at a later date." C

15. The above quoted principles laid down by this Court in interpreting Section 39 apply in all fours in this case also as the suit was instituted in 1981, long after the Act came into force. D

16. On the conclusions as above, we allow this appeal, set aside the judgment of the High Court and restore that of the Addl. District & Sessions Judge, Moradabad in Civil Revision Application No. 19/1985. However, there will be no order as to costs.

R.P.

Appeal allowed.