

OM WATI GAUR AND ORS.
v.
JITENDRA KUMAR AND ORS.

OCTOBER 31, 2002

[R.C. LAHOTI AND S.N. VARIAVA, JJ.]

Rent Control and Eviction:

U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972; Sections 3(a) and 39:

Eviction petition filed in the Civil Court under the old Act—On ground of non—payment of rent etc.—Benefits no-eviction conferred on certain categories of tenants after deposit of rent, interest and cost of suit under the New Act—Section 39—Entitlement to—Held, since there was a short deposit of rent and interest, tenant is not entitled to such benefits.

Respondent-landlords determined the tenancy by serving a notice to the tenant. Landlords filed eviction petition and also for recovery of rent, damages and mesne profits. Tenant deposited arrears of rent for certain period at a rate less than the actual rate of rent. Tenant died during the pendency of the suit and appellants (heirs of tenants) were brought on record. In the meanwhile U.P. Urban building (Regulations of Letting, Rent and Eviction) Act, 1972 was enacted. Vide Section 39 of the Act, benefits no eviction on certain categories of tenants in the pending proceeding had been conferred on depositing arrears of rent, interest thereon and cost of the suit to the Landlord. Appellants filed applications praying for grant of such benefits but Court decreed the suit in favour of landlords holding that there was short deposit of rent. Revision petition filed by the appellants was allowed. Aggrieved, respondent-landlords successfully filed writ petition in the High Court. Hence this appeal by the tenant.

It was contended for the appellants that arrears of rent was deposited before coming into force of the new Act and differential amounts and interest were deposited thereafter. Therefore, provisions under Section 39 of the Act were duly complied with for getting benefit of no eviction.

A On behalf of the respondent, it was submitted that appellants' tenancy had been terminated by notice and after coming into force of the new Act, they were not tenants to claim benefits under Section 39 of the Act.

Dismissing the appeal, the Court

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C **HELD: 1.1.** The provisions of the concerned statute have to be looked at in order to ascertain the rights available under the statute. The definition of "tenant" as contained in Section 3(a) of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act includes the heirs and legal representatives residing with the tenant at the time of his death. Admittedly, the Appellants were residing with the tenant at the time of his death. On coming into force of the new Act, even though the tenancy had been terminated, rent was payable on behalf of the tenant and, therefore, he would have been a tenant. On his death, the appellants who were residing with him at the time of his death, would be tenants.

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[25-C-D]

E **1.2.** The deposits of rent at the rate of Rs. 80 per month were not on time. Besides interest had not been deposited on delayed payment of rent. The first deposit was on 29th April, 1967 (for the period from 1st October, 1966 to 31st March, 1967). Thus from October 1966 to March 1967 there had been no deposits. Interest would have been payable on this delayed payment. Admittedly this interest amount had not been deposited. The second deposit was only on 6th October, 1967 (for the period from 1st April, 1967 to 30th September, 1967). Even here no interest had been deposited for the delayed payments. The third deposit was on 25th April, 1968 (for the period from 1st October, 1967 to 31st March, 1968). Here again interest had not been deposited for the delayed payments. More importantly, the Appellants chose to deposit at the rate of Rs. 80 per month when the actual rent was Rs. 100 per month. By choosing to deposit at the rate of Rs. 80 per month they took a risk that if the Court did not accept their contentions there would be no full deposit. The trial Court in **F** its decree held that the rent was Rs. 100 per month. This portion of the decree has not been challenged. Once it was held that the rent was Rs. 100 there was no deposit of the full rent within one month of the coming into force the said Act as envisaged by Section 39. Thus on this ground the High Court was right in confirming the decree for eviction.

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[25-H; 26-A-C]

Damadilal v. Parashram, [1976] 4 SCC 855, distinguished.

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Anand Nivas Private Ltd. v. Anandji Kalyanji Pedhi and Ors., [1964] 4 SCR 852 and *Jagdish Chander Chatterjee v. Sri Kishan*, [1972] 2 SCR 461, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 516 of 1999.

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From the Judgment and Order dated 30.7.1998 of the Allahabad High Court in C.M.W.P. No. 11858 of 1982.

Sudhir Kr. Gupta and Anurag Pandey for the Appellants.

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R.D. Upadhaya, Ms. Arti Upadhaya, Syed Ali Ahmad, Syed Tanweer Ahmad and Girdhar G. Upadhaya for the Respondents.

The Judgment of the Court was delivered by

S.N. VARIAVA, J. This Appeal is against a Judgment dated 30th July, 1998.

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Briefly stated the facts are as follows:

The Appellants are the wife, son and daughter of one A.K. Gaur. The said A.K. Gaur was the tenant of the Respondents 1 and 2 (hereinafter called landlords). The premises had been given on rent to said A.K. Gaur at a monthly rent of Rs. 100. On 29th September, 1966 the landlords sent a notice terminating the tenancy of A.K. Gaur with effect from the 31st day of the receipt of the notice. The tenancy was terminated on the ground that the rent had not been regularly paid. By his letter in reply dated 6th October, 1966 A.K. Gaur claimed that the rent up to September, 1966 had already been paid. The said A.K. Gaur claimed that the rent was only Rs. 80 per month as certain facilities had been withdrawn.

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The landlords then filed Suit No. 2385 of 1966 for eviction, for recovery of rent and for damages and mense profits. A.K. Gaur filed an application seeking permission to deposit the rent in the Court. This permission was granted by the Court. On 29th April, 1967 A.K. Gaur deposited the rent due and payable for the period from 1st October, 1966 to 31st March, 1967. On 6th October, 1967 he deposited rent for the period from 1st April, 1967 to 30th September, 1967. On 25th April, 1968 he deposited rent for the period

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A from 1st October, 1967 to 31st March, 1968. All these deposits were at the rate of Rs. 80 per month. The landlords then applied that they be allowed to withdraw the amounts lying deposited in Court. A.K. Gaur opposed this application on the ground that the landlords could only withdraw provided they accepted that Rs. 80 per month was the rent of the premises. The landlords, therefore, did not pursue their application and no order was passed thereon.

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On 15th January, 1970 A.K. Gaur died. The Appellants were brought on record as his heirs. On 15th July, 1972 the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the said Act) was enacted. Sections 3(a) and 39 of the said Act read as follows:

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“3. Definitions.-In this Act, unless the context otherwise requires-

(a) “tenant”, in relation to a building, means a person by whom its rent is payable, and on the tenant’s death-

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(1) In the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) In the case of a non-residential building, his heirs;

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39. Pending suits for eviction relating to buildings brought under regulation for the 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 eviction shall be passed except on any of the grounds mentioned in the proviso to sub-section (1) or in clauses (b) to (g) of 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.

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

aforesaid.”

It is an admitted position that the old Act did not apply to the concerned premises. The Appellants made an application under Section 39 of the said Act claiming that they had deposited all the rents and calling upon the landlords to confirm the same. The landlords filed a reply denying that all the rents had been deposited. The landlords however did not set out what had not been deposited. The Court, therefore, called upon the Landlords to indicate what according to them had not been deposited. The landlords then gave particulars indicating that the deposits had only been made at the rate of Rs. 80 per month whilst the rent was Rs. 100 per month. They also indicated that there had been delay in deposits and that interest had not been deposited in respect thereof. The landlords claimed that the Appellants had deposited Rs. 1491 less and, therefore, were not entitled to the benefit of Section 39. The Landlords also claimed that as the tenancy of A.K. Gaur had been terminated the Appellants were not entitled to the benefit of Section 39.

On 12 August, 1980 the suit filed by the landlords was decreed. It was held that the rent for the premises was Rs. 100 per month. It was held that there was a short deposit and that, therefore, the Appellants could not claim the benefit of Section 39. It was also held that the Appellants were not the tenants under the said Act and, therefore, not entitled to the benefit of Section 39.

Civil Revision No. 128 of 1980 filed by the Appellants was allowed by a Judgment dated 31st July, 1982. In this judgment it has been held that the Appellants were tenants within the meaning of the said Act. It was held that they had deposited all the amounts and were entitled to the benefit of Section 39.

The landlords then filed Writ Petition 11858 of 1982 in the High Court of Allahabad. This Writ Petition came to be allowed by the impugned Judgment dated 30th July, 1998. It is held that rent, at the rate of Rs. 100 per month, had not been deposited and the entire amount of the rent had not been deposited. It is held that the deposits at the rate of Rs. 80 per month were not made on time and interest for the delayed period had also not been deposited. The Court, therefore, set aside the Order dated 31st July, 1982 and restored the decree of the trial Court. The question whether the Appellants could claim the benefit of Section 39 was not answered on the footing that even if the said Act applied the Appellants had not complied with the requirements of Section 39.

A Mr. Sudhir Kumar Gupta, the learned counsel for the tenant-Appellants has submitted that, according to the Appellants, the rent was Rs. 80 per month. He submitted that even prior to the coming into force of the said Act the Appellants had deposited the rent in Court. He submitted that at the time the said Act came into force there were no arrears. He submitted that, as there were no arrears, no interest was payable. He pointed out that after the said B Act came into force, the Appellants had deposited the difference of Rs. 20 per month and interest thereon. He submitted that, therefore, the Appellants have fully complied with Section 39 of the said Act.

C Mr. Sudhir Kumar Gupta relied upon the definition of “tenant” under Section 3(a) of the said Act. He submitted that the heirs of the tenant were deemed to be the tenants under said Act.

Mr. Sudhir Kumar Gupta relied upon the case of *Damadilal v. Parashram* reported in [1976] 4 SCC 855, wherein it has been held as follows:

D “11. We find it difficult to appreciate how in this country we can proceed on the basis that a tenant whose contractual tenancy has determined but who is protected against eviction by the statute, has no right of property but only a personal right to remain in occupation, without ascertaining what his rights are under the statute. The concept of a statutory tenant having no estate or property in the premises E which he occupies is derived from the provisions of the English Rent Acts. But it is not clear how it can be assumed that the position is the same in this country without any reference to the provisions of the relevant statute. Tenancy has its origin in contract. There is no dispute that contractual tenant has an estate or property in the subject-matter of the tenancy, and heritability is an incident of the tenancy. It cannot F be assumed, however, that with the determination of the tenancy the estate must necessarily disappear and the statue can only preserve his status of irremovability and not the estate he had in the premises in his occupation. It is not possible to claim that the “sanctity” of contract cannot be touched by legislation. It is therefore necessary to examine G the provisions of the Madhya Pradesh Accommodation Control Act, 1961 to find out whether the respondents’ predecessor-in-interest retained a heritable interest in the disputed premises even after the termination of their tenancy.

H 12. Section 2(1) of the Madhya Pradesh Accommodation Control Act, 1961 defines ‘tenant’ to mean, unless the context otherwise

requires a person by whom or on whose account or behalf the rent of any accommodation is or, but for a contract express or implied, would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made.

The definition makes a person continuing in possession after the determination of his tenancy a tenant unless a decree or order for eviction has been made against him, thus putting him on par with a person whose contractual tenancy still subsists. The incidents of such tenancy and a contractual tenancy must therefore be the same unless any provision of the Act conveyed a contrary intention. That under this Act such a tenant retains an interest in the premises, not merely a personal right of occupation, will also appear from Section 14 which contains provisions restricting the tenant's power of subletting. Section 14 is in these terms:

Section 14. Restrictions on sub-letting.- (1) No tenant shall, without the previous consent in writing of the landlord-

- (a) sub-let the whole or any part of the accommodation held by him as a tenant; or.
 - (b) transfer or assign his rights in the tenancy or in any part thereof.
- (2) No landlord shall claim or receive the payment of any sum as premium or puggree or claim or receive any consideration whatsoever in cash or in kind for giving his consent to the sub-letting of the whole or any part of the accommodation held by the tenant.

There is nothing to suggest that this section does not apply to all tenants as defined in Section 2(i). A contractual tenant has an estate or interest in premises from which he carves out what he gives to the sub-tenant. Section 14 read with Section 2(1) makes it clear that the so-called statutory tenant has the right to sublet in common with a contractual tenant and this is because he also has an interest in the premises occupied by him. Considering the position of the sub-tenant of a statutory tenant in England Lord Denning said in *Solomon v. Orwell*, (1954) 1 All ER 874:

When a statutory tenant sublets a part of the premises, he does not

A thereby confer any estate or interest on the sub-tenant. A statutory tenant has no estate or interest himself, and he cannot carve something out nothing. The sub-tenant, like the statutory tenant, has only a personal right or privilege. In England the statutory tenant's right to sublet is derived from specific provisions of the Acts conceding this right to him; in the Act we are concerned with in this appeal, the right flows from his status as a tenant. This is the basic difference between the English Rent Restrictions Acts and the Act under consideration and similar other Indian statutes. In a Special Bench decision of the Calcutta High Court, *Krishna Prosad Bose. v. Smt. Sarajubala Dasi*, 65 Cal WN 293, 297-298, Bachawat, J., considering the question whether a statutory tenant continuing in occupation by virtue of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 could sublet the premises let to him, said:

D The Rent Control and Tenancy Acts create a special world of their own. They speak of life after death. The statutory tenancy arises phoenix-like out of the ashes of the contractual tenancy. The contractual tenant may die but the statutory tenant may live long thereafter. The statutory tenant is an ex-tenant and yet he is a tenant.

E The concept of statutory tenancy under the English Rent Acts and under the Indian statutes like the one we are concerned with in this appeal rests on different foundations. It must therefore be held that the precursors-in-interest of the present respondents had a heritable interest in the premises and consequently the respondents had the right to prosecute the appeal in the High Court. Mr. Gupta's first submission thus fails."

F He also relied upon the judgment in the case of *Mam Chand Pal v. Shanti Agarwal (Smt.)* reported in [2002] 3 SCC 49. In this case it has been held that a very rigid or technical view should not be taken in respect of deposit of rent. It has been held that if the tenant has substantially complied with the provisions then the benefit of the statute should be given to the tenant. Mr. Sudhir Kumar Gupta submitted that the Rent Control Act was a beneficial legislation and, therefore, it must be liberally interpreted in favour of the tenant.

H On the other hand, Mr. Upadhyaya, the learned counsel for the landlord-Respondents submitted that the Appellants were not the tenants. He submitted that the tenancy of A.K. Gaur had been terminated by a Notice dated 29th

September, 1966. He submitted that thereafter Shri A.K. Gaur was not a tenant. He submitted that at the time when the said Act came into force Shri A.K. Gaur would not have been a tenant as no rent was payable by him. He submitted that, therefore, the Appellants also would not be tenants. He relied on the cases of *Anand Nivas Private Ltd. v. Anandji Kalyani Pedhi and Ors.*, reported in [1964] 4 SCR 852 and *Jagdish Chander Chatterjee v. Sri Kishan* reported in [1972] 2 SCR 461. In both these cases it has been held that a person in occupation after termination of tenancy has no estate or interest in the premises occupied by him.

We are unable to accept this submission of Mr. Upadhyaya. In *Jagdish Chander's* case the ratio laid down in *Anand Niva's* case was approved. In *Damadilal's* case (supra) both these decisions have been considered and the principles laid down therein have been disapproved. *Damadilal's* case lays down that the provisions of the concerned statute have to be looked at in order to ascertain what the rights are available under the statute. The definition of a "tenant" as contained in Section 3(a) of the said Act includes the heirs and legal representatives residing with the tenant at the time of his death. Admittedly, the Appellants were residing with A.K. Gaur at the time of his death. On the coming into force of the new Act, even though the tenancy had been terminated, rent was payable on behalf of Shri A.K. Gaur and, therefore, he would have been a tenant. On his death the Appellants who were residing with him at the time of his death would be tenants.

Mr. Upadhyaya then submitted that the High Court was right in concluding that even if Section 39 applied the Appellants had not deposited the entire amount of the rent and interest. He pointed out that the trial Court had fixed the rent at Rs. 100 per month. He submitted that the Appellants took a risk in depositing rent by calculating it at the rate of only Rs. 80 per month. He submitted that once the trial Court fixed the rent at Rs. 100 per month there was shortfall in deposit and thus the Appellants could not be said to have deposited the entire amount of rent. He submitted that even otherwise the interest had been paid only on the difference of Rs. 20, even though the deposits at rate of Rs. 80 per month were not on time. He submitted that, therefore, the High Court was right in confirming the decree of eviction passed by the trial Court.

We find that the deposits of rent at the rate of Rs. 80 per month were not on time. The first deposit was on 29th April, 1967 (for the period from 1st October, 1966 to 31st March, 1967). Thus from October 1966 to March 1967 there had been no deposits. Interest would have been payable on this

- A delayed payment. Admittedly this interest amount had not been deposited. The second deposit was only on 6th October, 1967 (for the period from 1st April, 1967 to 30th September, 1967). Even here no interest had been deposited for the delayed payments. The third deposit is on 25th April, 1968 (for the period from 1st October, 1967 to 31st March, 1968). Here again interest had not been deposited for the delayed payments. More importantly, the Appellants chose to deposit at the rate of Rs. 80 per month when the actual rent was Rs. 100 per month. By choosing to deposit at the rate of Rs. 80 per month they took a risk that if the Court did not accept their contentions there would be no full deposit. The trial Court in its decree dated 12th August, 1980 held that the rent was Rs. 100 per month. This portion of the decree has not been challenged. Once it was held that the rent was Rs. 100 there was no deposit of the full rent within one month of the coming into force the said Act as envisaged by Section 39. Thus on this ground the High Court was right in confirming the decree for eviction.

- D We, therefore, see no reason to interfere. The Appeal stands dismissed with no order as to costs.

Mr. Sudhir Kumar Gupta applies for time to enable his clients to vacate. We grant time of 4 months from today for the Appellants to vacate the premises on their filling in this Court within 3 weeks from today the usual undertaking.

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S.K.S.

Appeal dismissed.