A C.N. RUDRAMURTHY ETC.

v.

K. BARKATULLA KHAN AND ORS. ETC.

OCTOBER 8, 1998

B [HON'BLE M.M. PUNCHHI, CJ., G.B. PATTANAIK AND S. RAJENDRA BABU, JJ.]

Rent Control and Eviction

C *Karnataka Rent Control Act, 1961—S. 31—Eviction suit—Inapplicability of the provisions of the Act to premises whose monthly rent exceeds Rs. 500/—Supreme Court holding in D.C. Bhatia's case that provisions of S. 3(c) of Delhi Rent Control Act not applicable to premises whose monthly rent exceeds Rs. 3000—High Court relying upon a contrary view of* D *High Court in Padmanabha Rao's case declaring S. 31 as invalid—Eviction decree passed by Trial Court set aside—Parties directed to approach Rent Control Court—Validity of—Held, the law laid down by Supreme Court is binding on all Courts—High Court not justified in taking a contrary view by relying upon a decision which was impliedly overruled by Supreme Court—Eviction decree passed by Trial Court restored—Delhi Rent Control* E *Act, 1958—Sec. 3(c).*

Constitution of India, 1950—Article 141—Law declared by Supreme Court—Binding effect of—Held, law declared by Supreme Court is binding on all Courts—Karnataka Rent Control Act, 1961—S. 31.

F **Appellant-landlord's suit for eviction was decreed by Trial Court. On appeal, High Court set aside the said decree holding that in view of provisions of S. 21(1) (f) of the Karnataka Rent Control Act, 1961, the Trial Court had no jurisdiction to pass an order of eviction. Appellant contended before the High Court that S. 31 of the Act, exempted from the applicability of the Act, premises whose monthly rent exceeded Rs. 500. It was also brought to the** G **notice of the High Court that this Court in *Shobha Surendar's* case* had held that the law laid down in *D.C. Bhatia's* case** would be applicable. In *D.C. Bhatia's* case it was held by this court that in view of S. 3(c) of Delhi Rent Control Act, 1958, the said Act would not be applicable to Premises whose monthly income exceeded Rs. 3000, which was akin to provision of S.** H **31 of the Karnataka Rent Control Act. However, High Court relying upon**

the decision of this court in *Rattan Arya's* case*** and decision of High Court in *Padmanabha Rao's* case**** declaring S. 31 of the Act as invalid, directed the parties to work out their remedies under the Rent Control Act. Hence the present appeal.

On behalf of the respondents it was contended that since there was no direct decision of this Court holding that the law laid down in *Padmanabha Rao's* case as incorrect, the said case may be examined by this Court; if S. 31 of the Karnataka Rent Control Act, 1961 was held valid relying upon D.C. Bhatia's case, then the said enactment would keep out of its purview large number of premises whose monthly rent exceeded Rs. 500.

Allowing the appeal and setting aside the order of High Court, the Court.

HELD : 1. High Court was not justified in directing the parties to work out their remedies under the Karnataka Rent Control Act 1961. The eviction decree passed by Trial Court is restored. [201-G; 203-C]

2.1. It is a matter of judicial discipline that requires that when this Court states as to what the law on the matter is, the same shall be binding on all the courts within the territory of India. This mandate of Article 141 of the Constitution is not based on any doctrine of precedents, but is an imprimature to all courts than the law declared by this Court is binding on them. Thus, it was not open to the High Court to consider the effect of the decisions in *Rattan Arya's case*, its scope, what was decided therein and whether there could be any distinction between that decision and the decision rendered in *D.C. Bhatia's* case. The clear pronouncement made by this court in *Shobha Surendar's* case was that *D.C. Bhatia's* case was applicable with reference to S. 31 of the Karnataka Rent Control Act and, therefore, in view of that decision the High Court's decision was upset in another matter where, the High Court had followed the Padmanabha Rao's case. The law declared by this Court is clear that the *D.C. Bhatia's* case was applicable to the provisions of Karnataka Rent Control Act. Thus, it was not at all open to the High Court to have tried to explain the decision of this Court and ought to have simplicity followed the decision of this Court. [201-D-E-F]

D.C. Bhatia and Ors. v. *Union of India,* [1995] 1 SCC 104 and *Shobha Surendar* v. *Mrs. H.V. Rajan and Ors.,* in C.A. No. 13754 of 1996, relied on.

Padmanabha Rao v. *State of Karnataka,* ILR (1986) Kar. 2480, impliedly overruled.

Rattan Arya v. *State of Tamil Nadu,* [1986] 3 SCC 385, held inapplicable.

A **2.2. There is no necessity for this Court to examine the view taken by High Court in *Padmanbha Rao's* case, when this Court applied its mind to the facts of the case, the law declared by this Court in *D.C. Bhatia's* case and applied the same with reference to the provisions of the Karnataka Rent Control Act. This Court itself considered the effect of *D.C. Bhatia's* case with reference to the provisions of the Karnataka Rent Control Act and**
B **applied the same thereto and thereafter declared what the law should be. Though this Court did not specifically referred to the decision in *Padmanabha Rao's* case, the same stood overruled because the law declared by this Court was contrary to what was stated in *Padmanabha Rao's* case.**

[202-A-B; D-E]

C *Padmanabha Rao* v. *State of Karnataka,* **ILR (1986) Kar. 2480, held already overruled.**

3. Though Karnataka Rent Control Act was enacted in the year 1961 and was to lapse by the end of 10 years time, it has been extended from time to time in the same form in which it was enacted originally or with some
D **modification wherever it was necessary. It cannot be imagined that the Legislature was not aware or conscious of the fact as to the rents prevalent in the city of Bangalore or in other parts of the State in respect of non-residential premises. Perhaps, the Legislature thought it was necessary to give protection of the Act to only very poor tenants who pay rent less than**
E **Rs. 500 per month considering the fact that tenants in other premises are economically of superior class and can withstand the maneouvers of a landlord however powerful he may be. If that was the policy of the law, as stated in *D.C. Bhatia's* case, it was not open to the Court to have declared the same to be invalid. [203-A-B-C]**

F *Malpe Vishwanath Acharya* v. *State of Maharashtra,* **[1998] 2 SCC 1;** *Rattan Arya* v. *State of Tamil Nadu,* **[1986] 3 SCC 385;** *Motor General Traders* v. *State of A. P.,* **[1984] 1 SCC 222;** *Synthetics and Chemicals Ltd. and Ors.* v. *State of U.P. and Ors.,* **[1990] 1 SCC 109 and** *Sant Lal Bharti* v. *State of Punjab,* **[1988] 1 SCC 366, held inapplicable.**

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5039 of 1998 etc.

From the Judgment and Order dated 14.8.97 of the Karnataka High Court in R.F.A. 171 of 1993.

Rama Jois, P.R. Ramsesh, R.K. Khanna Surya Kant and Sushil Balwada
H for the Appellants.

S.K. Kulkarani and Ms. Sangeeta Kumar for the Respondents. A

The Judgment of the Court was delivered by

RAJENDRA BABU, J. The appellant filed a suit against Bhaskaran, the original tenant in occupation of a premises bearing No. 199 and 200 situated at Brigade Road in Bangalore city for recovery of possession thereof on the B ground that he had defaulted in payment of rent and had sublet the same contrary to law. The original tenant set up the defence that he had not sublet the suit premises or any portion thereof, but had only entered into an agreement to run business on his behalf and he was not liable to be evicted. The original tenant died on 8.1.1983 and his legal representatives were brought on record. C They filed a written statement on 1.8.1984 contending that their father had parted with possession of the suit premises to respondent No.1 and no decree could be passed against them. Respondent No.1 was impleaded as a defendant on an application made by him. He contended that he had become a partner with Bhaskaran with the consent of the appellants and partnership stood dissolved as on 10.12.1982 and thus he was a tenant under the appellant D directly. His tenancy had not been terminated and, therefore, there was no cause for suit. By a decree made on 31.3.1993, the City Civil Court directed the eviction of the first respondent. Respondent No.1 preferred an appeal against the said decree in the High Court. This appeal is against that order made by the High Court of Karnataka in that appeal filed by Respondent No.1. E

In the High Court three principal points were formulated for consideration:-

(1) Whether the first respondent is a tenant? If not, what is his status?

(2) Whether the suit is maintainable for ejection of the first respondent? F

(3) Whether the first respondent is entitled for mesne profits under Order XX Rule 10 of the C.P.C.?

The first two points raised for consideration turned on the question G whether the first respondent is a tenant or not? If he is a tenant, it was stated that the matter has necessarily to go before the Rent Control Court for eviction under Section 21 of the Karnataka Rent Control Act (hereinafter referred to as "the Act"). However if the first respondent is declared to be a trespasser, he is liable for eviction by virtue of a decree in the suit. The Courts below took the view that the first respondent is liable to pay rents or H

A damages from 10.12.1982 and, therefore, they had no difficulty in answering the third point raised for consideration. What is really in issue before us are the first two points.

The High Court held that there is no acceptable evidence to declare the first respondent as a tenant and thereby affirmed the conclusion reached by B the trial court. After examining the scope of Section 23 of the Karnataka Rent Act which forbids creation of sub-lease or assignment or transfer either whole or any part of the demised premises, the learned Judge was of the view that the original tenant allowed others to carry on the business in his name as he was unable to carry on the business by himself due to old age initially by inducting the first respondent as a partner of the firm and then in his own C capacity as a owner of the business concern which was not an unknown mode of transfer of tenancy and, therefore, the first defendant was not a trespasser. He, however, noticed that the first respondent was not inducted with the consent of the landlord and therefore his possession becomes unlawful and he is liable to be evicted under the provisions of Section 21(1)(f) D of the Karnataka Rent Control Act and no other conclusion was possible in this regard. In view of that finding he held that the Civil Court has no jurisdiction to pass an order of eviction as there is a specific provision ousting the jurisdiction of the Civil Court to entertain any suit for eviction of a tenanted premises. On that basis, he allowed the appeal and set aside the decree made by the trial court and directed the parties to work out their E remedies in a Rent Court.

In this background a contention was raised on behalf of the appellant that Section 31 of the Karnataka Rent Control Act enabled the filing of the suit as the rent in respect of the same was above Rs.500 per month. The High F Court held that Section 31 of the Karnataka Rent Control Act had been declared invalid in *Padmanabha Rao* v. *State of Karnataka,* ILR (1986) Kar 2480. The view expressed by this Court in Civil Appeal No. 13754 of 1996 entitled *Shobha Surendar* v. *Mrs. H.V. Rajan and Ors.,* was also brought to the notice of the High Court which reads as follows :-

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> "In view of the decision of this Court in *D.C. Bhatia and others* v. *Union of India,* [1995] 1 S.C.C. 104, this appeal would merit acceptance and accordingly we accept the same, set aside the impugned orders of the High Court and restore that of the Trial Court with regard to possession of the property in dispute as well as entitlement of the appellant to contractual rent up till the date of vacating for which item H is being allotted hereby to the respondents."

While considering the question whether the decision of this Court in Shobha Surendar case had impliedly overruled the decision of the Karnataka High Court in *Padmanabha Rao's* case, the High Court held that the decision laid down in *Rattan Arya* v. *State of Tamil Nadu,* reported in [1986] 3 SCC 385, should be followed and the decision in *D.C. Bhatia's* case had no application.

In *D.C. Bhatia's* case (supra) this Court was concerned with a provision under the Delhi Rent Control Act and Section 3(c) made it clear that the Act was not applicable to any premises whether residential or non-residential whose monthly rent exceeds three thousand rupees which is akin to the provision under Section 31 of the Karnataka Rent Control Act. In *Shobha Surendar's* case the High Court had proceeded to rely upon *Padmanabha Rao's* case; when the matter was brought to this Court though no specific reference was made to Padmanabha Rao's case, this Court stated that the law laid down in *D.C. Bhatia's* case would be applicable, it was not open to the High Court to state that it would prefer to follow the decision in Rattan Arya's case. Indeed it is a matter of judicial discipline that requires that when this Court states as to what the law on the matter is, the same shall be binding on all the Courts within the territory of India. This mandate of Article 141 of the Constitution is not based on any doctrine of precedents, but is an impramatur to all courts that the law declared by this Court is binding on them. If that is so, it was not open to the High Court to consider the effect of the decisions in Rattan Arya's case, its scope, what was decided therein and whether there could be any distinction between that decision and the decision rendered in D.C. Bhatia's case. The clear pronouncement made by this Court in *Shobha Surendar's* case was that *D.C. Bhatia's* case was applicable with reference to Section 31 of the Karnataka Rent Control Act and, therefore, in view of that decision, the High Court's decision was upset in another matter where the High Court had followed the Padmanabha Rao's case. In effect, Padmanabha Rao's case stood impliedly overruled. Thus, it was not at all open to the High Court to have tried to explain the decision of this Court and ought to have implicitly followed the decision of this Court. The law declared by this Court is clear that the D.C. Bhatia's case was applicable to the provisions of Karnataka Rent Control Act. So it was not open to the learned Judge to take any other view in the matter. Thus we are of the view that the direction issued by the High Court to the parties to work out their remedies under the Rent Control Act is not at all correct.

However, learned counsel for the respondents submitted that there has

A been no decision of this Court directly stating that the law declared by the High Court in Padmanabha Rao's case was not correct and, therefore, the view taken in Padmanabha Rao's case may be examined by us and we may either uphold the view expressed therein or take another view though such a course was not open to the High Court. We do not think such an exercise is necessary when this Court applied its mind to the facts of the case, the B law declared by this Court in *D.C. Bhatia's* case and applied the same with reference to the provisions of the Karnataka Rent Control Act. If there has to be any change in the policy, it is certainly open to the Legislature to intercede it and make appropriate law in that regard. Therefore, this argument advanced on behalf of the learned counsel for the contesting respondent C does not appeal to us.

Yet another argument was pressed upon us to the effect that when a provision of law in an enactment has been declared to be invalid and when the Supreme Court declares the law with reference to another enactment of similar nature, it would not be open to the High Court to say that the decision D of this Court should be taken to have been overruled or upset the decisions rendered by the High Court declaring the law to be invalid. This principle has no application in the present case at all because this Court itself considered the effect of *D.C. Bhatia's* case with reference to the provisions of the Karnataka Rent Control Act and applied the same thereto and thereafter E declared what the law should be. Though this Court did not specifically refer to the decision in Padmanabha Rao's case, it is needless to say that the same stood overruled because the law declared by this Court was contrary to what was stated in Padmanabha Rao's case. Therefore that argument also is not sound and needs to be rejected.

F It is submitted that if we take the view that Section 31 of the Karnataka Rent Act is valid in view of D.C. Bhatia's case, then the enactment will keep out of its purview large number of premises inasmuch as the rent payable in respect of commercial premises in Bangalore will certainly be more than Rs. 500/- per month. We have given our careful consideration to this aspect of G the matter. Relying upon the decisions in *Malpe Vishwanath Acharya* v. *State of Maharashtra,* [1998] 2 SCC 1; *Rattan Arya* v. *State of Tamil Nadu,* [1986] 3 SCC 385; *Motor General Traders* v. *State of A.P.,* [1984] 1 SCC 222; *Synthetics and Chemicals Ltd. and Ors.* v. *State of U.P. and Ors.,* [1990] 1 SCC 109 and *Sant Lal Bharti* v. *State of Punjab,* [1988] 1 SCC 366, it was submitted that with passage of time and change of circumstances the continued operation H of an Act which was valid were enacted may become invalid as being arbitrary

and unreasonable. Though Karnataka Rent Control Act was enacted in the year 1961 and was to lapse by the end of 10 years time, it has been extended from time to time in the same form in which it was enacted originally or with some modification wherever it was necessary. We cannot imagine that the Legislature was not aware or conscious of the fact as to the rents prevalent in the city of Bangalore or in other parts of the State in respect of non-residential premises. Perhaps, the Legislature thought it was necessary to give protection of the Act to only very poor tenants who pay rent less than Rs.500 per month considering the fact that tenants in other premises are economically of superior class and can withstand the maneuvers of a landlord however powerful he may be. If that was the policy of the law, we do not think as stated in *D.C. Bhatia's* case, it was open to the Court to have declared the same to be invalid.

In the result, we are of the view that the decree passed by the trial court is to be restored by setting aside the order made by the High Court and we order accordingly. The appeal, therefore, stands allowed. However, considering all aspects of the matter, we are of the opinion that the first respondent be given some reasonable time to vacate the premises and which in this case we consider will be a period upto 30th of June, 1999 subject to the filing of usual undertaking within four weeks from today. In the event such an undertaking is not filed before this Court, it would be open to the appellant to seek for immediate eviction in addition to the condition that he shall vacate the premises and deliver the same on or before 30th of June, 1999.

CIVIL APPEAL NO. 5040 OF 1998 ARISING OUT OF

SPECIAL LEAVE PETITION (CIVIL) NO. 4557 OF 1998.

In view of the decision rendered by us in Civil Appeal arising out of Special Leave Petition (C) No. 6836 of 1996, the view taken by the High Court has got to be upheld and this appeal deserves to be dismissed. However, the appellant is granted time to vacate the premises on or before 30th of June, 1999 upon his furnishing the usual undertaking in this Court within four weeks from today.

S.V.K.I. Appeal allowed.