

A

LAL CHAND AND ANR.
v.
DISTRICT JUDGE AGRA AND ORS.

SEPTEMBER 16, 1999

B

[M. JAGANNADHA RAO AND M.B. SHAH, JJ.]

U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

C

S.2(2) Explanation (1)—Building exempted from operation of Act for 10 years from its "Construction"—Tenancy of shop under United Provinces (Temporary) Control of Rent and Eviction Act—Building reconstructed—Shop vacated during reconstruction—Tenant put in possession after reconstruction of shop in 1970—Landlord filing civil suit in 1976 seeking eviction of tenant after giving notice u/s. 106 of Transfer of Property Act and

D

contending that because of reconstruction, building was exempt from provisions of 1972 Act—Tenant's contention that he has been a statutory tenant, exemption period of 10 years to a new construction would not be applicable, rejected by courts below and decree of eviction passed—Held, courts below have recorded a finding of fact that the shop was a new

E

construction—Period of 10 years even if reckoned from 1970, goes upto 1980 and suit having been filed in 1976 during the ten years period is maintainable in as much as during the said period the building was exempt from the provisions of the Act—In Instant case, building having been demolished by way of an agreement between tenant and landlord, S.19 of 1947 Act would

F

not apply and statutory right of tenant came to an end—Judgments of High Court and Trial Court do not warrant any interference—Order of eviction not to be enforced for one year on tenant's filing usual undertaking—United Provinces (Temporary) Control of Rent and Eviction Act, 1947—S.7 and 19.

Words and Phrases -

G

"Construction"—Meaning of.

Om Prakash Gupta v. Dig. Vijendrapal Gupta, [1982]2 SCC 61; and Ramesh Chandra v. III Additional District Judge and Ors., [1992]1 SCC 751, relied on.

H

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1040 of 1995. A

From the Judgment and Order dated 5.9.94 of the Allahabad High Court in C. Misc. W.P. No. 5650 of 1982.

M.C. Dhingra for the Appellant.

Arvind Kumar and Ms. Laxmi Arvind for the Respondent No. 3. B

The following Order of the Court was delivered :

This appeal is preferred by the legal representative of Gian Chand, the original tenant who was sought to be evicted by the respondent-landlord in a regular Civil suit for eviction filed in 1976. According to the landlord, the building was newly constructed in 1970, Gian Chand, the erstwhile tenant re-took possession in 1970, but that because of reconstruction, the building was exempt from the provisions of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the 1972 Act) for a period of 10 years as mentioned in Section 2(2) of the Act. The new Act came into force on 15.7.72. The landlord gave notice for eviction in 1976 under Section 106 of the Transfer of Property Act terminating the tenancy and thereafter, he filed the present suit in 1976. C D

The tenant, Gian Chand contended that he was tenant from 1959 and that the building was reconstructed and the re-construction was completed in 1970. He was occupying only a room earlier and though there was some new construction, the room occupied by him did not suffer any reconstruction and in any event, he was entitled to the protection which was available to him under the old Act of 1947. E F

Gian Chand was allotted the shop on rent by the prescribed authority under Section 7 of the United Provinces (Temporary) Control of Rent and Eviction Act, 1947, which was the authority to allot vacant premises on rent. Subsequently, Gian Chand accommodated the respondent landlord by voluntarily vacating the room in his occupation, upon an understanding that he would be put back into possession after reconstruction. Therefore, after reconstruction, he was again inducted into possession as tenant. Gian Chand contended that he would continue to be a statutory tenant and, therefore, the exemption period of 10 years granted under the 1972 Act to a new construction would not be applicable in this case. G H

A The Trial Judge, namely, the Judge in the Court of Small Causes, Agra in his judgment dated 19.10.81 framed four issues for consideration as follows.

(1) Whether disputed premises was newly constructed in the year 1970 as stated in the plaint?

B (2) Whether the defendants' rights are protected in respect of the disputed premises under provisions of U.P. Act No. 13 of 1972?

(3) Whether the notice by plaintiff is illegal and wrong as has been stated in W.S.?

C (4) To what relief plaintiff is entitled?

On the first issue, the learned Trial Judge considered the oral and documentary evidence and came to the conclusion that the room and the entire building were reconstructed, and the room in question was a new "building" within Explanation-I below Section 2(2) of the new Act, 1972. Hence, the building as reconstructed was exempt from the Act for a period of 10 years and the suit for eviction filed in the Civil Court after giving notice under Section 106 of the Transfer of Property Act, was maintainable. He, therefore, passed a decree for eviction. *This view* was affirmed by the High Court.

E Learned counsel for the appellants, (legal heirs of Gian Chand) contended before us that Gian Chand having been a statutory tenant of the building before reconstruction, he, on induction into the new premises in 1970 continued to be a statutory tenant under the old Act of 1947. The room was not to be treated as a new one in as much as there was no reconstruction so far as the room was concerned, though there were additions.

F Section 2 of the Act deals with exemption from the operation of the Act. It states in sub-clause (2) that nothing in the new Act shall apply to a building during a period of 10 years from the date on which its construction is completed. There are three Explanations below sub-section (2) of Section 2. We are concerned with the first Explanation. The Explanation I reads as follows:

G "Explanation (1)(a): The construction of building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction and in the case of a building subject to assessment, the

H

date on which the first assessment thereof comes into effect, and where the said date are different, the earliest of the said dates, and in the absence of any such report, record or assessment, the date on which it is actually occupied (not including occupation merely for the purposes of supervising the construction or guarding the building under construction) for the first time;

Provided that there may be different dates of completion or construction in respect of different parts of a building which are either designed as separate units or are occupied separately by the landlord and one or more tenants or by different tenants;

(b) "construction" includes any construction in place of an existing building which has been wholly substantially demolished;

(c) Where such substantial addition is made to an existing building that the existing building becomes only a minor part thereof the whole of the building including the existing buildings shall be deemed to be constructed on the date of completion of the said addition."

It is to be noticed that Sub-clause (b) of Explanation-I defines "construction" as including any new construction made in place of an existing building which has been wholly or substantially demolished. Sub Clause (a) of Explanation-I deals with the manner in which the period of 10 years has to be computed. Question arises whether the construction or reconstruction must have taken place after 15.7.72, the date when the new Act has come into force. But on this aspect there are two judgments of this Court rendered by three Judge Benches that the Act does not apply to constructions or reconstructions made before 15.7.72 provided the 10 years period spreads over 15.7.72 and the suit is filed after Section 106 notice under the Transfer of Property Act, within the 10 years from the date of construction. See *Om Prakash Gupta v. Dig Vijendrapal Gupta*, [1982] 2 SCC 61 and *Ramesh Chandra v. III Additional District Judge and Ors.*, [1992] 1 SCC 751. These decisions are binding on us and cannot be distinguished on the ground that they did not involve reconstruction.

The trial Court as well as the High Court have held that this is a case in which there is no evidence as to when the landlord reported the date of completion of the reconstruction to the local authority. Therefore, the first part of the clause (a) of the Explanation-I to Section 2(2) of the 1972 Act is not applicable and under the second part of the Explanation, the relevant date

- A of reconstruction is the date of first assessment and ten years have to be counted from the date of the first assessment. The evidence shows that the first assessment is on 1.10.72. The Courts have found therefore, that the building is exempt from the provisions of new Act for a period of 10 years from 1.10.72 and that therefore, notice under section 106 of the Transfer of Property Act could be given on 2.8.76 and the suit could be filed for eviction in 1976 in as much as the building was exempt from the provision of the Act as on 1976. This view, in our opinion, is correct.

- C The Trial Court and the High Court also considered the oral and documentary evidence adduced in the case and went into the nature of various constructions made even with reference to the room which was under the occupation of Gain Chand, the father of the appellants. The courts found that the flooring was removed and lowered and the roof was also changed. The walls on two sides were totally removed and major change were also made in the remaining two walls. In one of the remaining walls, a door was fixed and in the other certain other changes were made. After considering the evidence relating to the various constructions made in regard to the particular room which was under the previous occupation of Gain Chand, the Courts below came to the conclusion that even this room must be treated as one newly constructed. This being a finding of fact, we cannot interfere as we do not find any infirmity in the said finding.

- E Learned counsel for the appellants however, contended that Gain Chand was a statutory tenant in respect of the premises and that in view of Section 1A of the old Act of 1947, the room even if reconstructed in 1970 continued to be governed by the 1947 Act. Reliance is placed upon Section 1A of the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 which reads as follows :

“Nothing in this Act shall apply to any building or part of a building which was under erection or was constructed on or after January 1, 1951.”

- G Learned counsel for the appellants contends that in as much as the new building is constructed in 1970 i.e. after 1.1.1951 and before the new Act i.e. 15.7.72, Gain Chand and after him, the appellants are entitled to the protection of the provisions of the old Act. We are unable to agree. In view of the decisions of this Court quoted above in *Om Prakash Gupta and Ramesh Chandra's* cases the new Act is applicable and the period of 10 years, even if reckoned from 1970 goes upto 1980 and the suit filed in 1976 during the 10

years period, is maintainable. A

So far as the rights of statutory tenancy which related to the room covered by the 1947 Act are concerned, we find that Section 19 of the old Act no doubt gives protection to erstwhile tenant but it deals with a situation where the building gets demolished by fire, tempest etc. or is rendered unfit for the purposes for which it has meant and where such situations led to reconstruction. In such cases, Section 19 of the old Act gave protection to the erstwhile statutory tenant. Admittedly, in a case, like the one before us where the building was demolished by way of an agreement between the tenant and the landlord, Section 19 of the old Act would not apply. B

Under the new Act of 1972, Section 24(2) states that whenever a landlord obtains a building for demolition or reconstruction and follows a particular procedure for release, it will be open to the erstwhile statutory tenant to apply to the competent authority to allow him to re-occupy the premises newly constructed, with the same rights of statutory tenancy. But, there is no similar provision like Sub-clause (2) of Section 24 in the old Act. Indeed, even as per the new Act, a case of an agreement entered into voluntarily for demolition and re-induction, does not fall under Section 24(2). The result is that once the building stood demolished before 1970 by an agreement, the statutory rights of the tenant came to an end as there was no provision of the old Act which provided for continuance of any rights of statutory tenancy, in a situation of voluntary surrender and full reconstruction of the premises. For the aforesaid reasons the judgment of the High Court as well as of the trial Court do not warrant any interference. The appeal is, therefore, dismissed. However, in the circumstances of the case, there shall be no order as to costs. C D E

We, however, direct that the order of eviction passed by the lower courts, as affirmed by us shall not be enforced for a period of one year from today provided the appellants file the usual undertaking in this Court within a period of 8 weeks from today. The appellants shall also pay all the electricity dues or arrears of rent, if any, within three months from today. In case there is any breach of the terms of the undertaking filed by the appellants or of the conditions imposed by this order, the decree of eviction passed by the lower courts as affirmed by this Court, shall become immediately executable. Subject to the above condition, the appeal is dismissed. F G

R.P.

Appeal dismissed.