

Ranchoddas and anr. Vs. Gupta Brass Stores and ors.

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Court : Mumbai

Decided On : Mar-23-1983

Reported in : AIR1983Bom455; 1983MhLJ933

Judge : Mohta, J.

Acts : [Limitation Act, 1963](#) - Sections 12 and 12(2); ;Central Provinces and Bearer Letting of Houses and Rent Control Order, 1949

Appeal No. : Writ Petn. No. 2073 of 1973

Appellant : Ranchoddas and anr.

Respondent : Gupta Brass Stores and ors.

Advocate for Def. : V.R. Padhye, Adv.

Advocate for Pet/Ap. : M.V. Dhareshwar, Adv.

Judgement :

ORDER

1. The point that falls for determination in the present petition is whether provisions of S. 12(2) of the [Limitation Act, 1963](#) ('the Act of 1963' for short) apply to the application for review by the interested party under Clause 21(2-a) of the C. P. & Berar Letting of Houses and Rent Control Order, 1949 ('the HRC Order' for short).

2. It is unnecessary to burden the judgment with the facts. Admitted position is that if the period spent in obtaining certified copy of the impugned order is excluded the application is within time and not otherwise. The Appellate Authority rejected the application for review as time barred on a view that unlike Clause 21 (1) and (1-a) relating to appeal neither filing of the certified copy of the judgment complained of is mandatory nor time taken in obtaining the copy is specifically excluded in case of review under Clause 21 (2-a).

3. It is apparent that the impact of the Act of 1963 on the HRC order has not been considered by the Appellate Authority. Relevant provisions are Ss. 12(2) and 29(2) of the Act of 1963. Section 12(2) permits exclusion of time required to obtain certified copy of the order challenged in computing the limitation for 'an appeal or an application for leave to appeal or for revision or for review of a judgment.' Section 29(2) provides that 'for the purpose of determining any special or local law. the provisions contained in Ss. 4 to 24 (inclusive) shall apply only in so far as and to the extent to which, they are not expressly excluded by such special or local law.' The word 'expressly' used in the later section is significant. That the HRC Order is a 'special or local law' and, therefore, S. 29(2) makes applicable provision of S. 12(2) to it, admits of no serious debate. In this connection useful reference may also be made to the decision of the Court in *Dagdulal v. State* 1981 Mah LJ 49. What is canvassed before me is that specially providing for filing of certified copy and exclusion of time spent in obtaining the same in case of appeal and not providing so in case of review in the very same clause amounts to express exclusion of S. 12 of the Act of 1963. I find it difficult to accept this contention. for applicability of S. 12 it is not at all necessary that the filing of the certified copy of the order complained of should be mandatory. Absence of requirement of filing certified copy is privilege conferred on the applicant and has nothing to do with the positive directions contained in S. 12(2) . This position is judicially crystallized by India Courts. In the case of the *Commissioner of Sales Tax v. M/s/ Madanalal Dan & Sons* : [1977]1SCR683 , it is observed (at p. 526) :

'It is plain that since 1928 when the Judicial Committee decided the case of *Surty* AIR 1928 PC 103 the view which has been consistently take by the Courts in India is that the provisions of S. 12(2) of the Limitation Act would apply even though the

copy mentioned in that sub-section is not required to be filed along with the memorandum of appeal. The same position should hold good in case of revision petitions ever since Limitation Act of 1963 came into force.'

3-A This takes me to the second question as to whether S. 12(2) applies only to the Courts and does not apply to authorities under the HRC Order. It is pertinent to notice that in the language of S. 12(2) of the Act of 1963, there is no reference to the word 'court'. It is true that at one time there was a controversy as to whether in view of the preamble of the Limitation Act, 1908 ('the Act of 1908' for short) it related only 'to limitation of suits, appeals and certain applications to Courts' and to no other Authority, Tribunal etc. But the controversy now does not survive in view of the deletion of the preamble from the Act of 1963 which merely gives the long title. Even otherwise, in case of law relating to Limitation which takes away right to sue, an equitable approach where the language is not clear . would be to adopt a construction in favour of a right to proceed rather than barring such a right. Certain other changes in the new Act including change in the definition of the term 'applicant' and defining 'application' for the first time, are not without significance. My attention was invited to the fact that sub-cl. (1-a) and (2-a) have been added to Clause 21 by amendment. I fail to see now this aspect can have any impact on the point involved. So is the case with the provisions of sub-clause (2-a) providing also for suo motu power of review.

4. One of the points that was debated was whether even if the Act of 1963 applies only to Courts, authorities under the HRC Order do answer the tests laid down for the purpose. The term 'Court' is not defined either under the Act of 1963. Contempt of Courts Act or General Clauses Act. Indian Evidence Act does define this term but it is held by courts that the definition is for the limited purpose of the said Act. Inevitably therefore one has to go to the judicial determination of the said term. The Full Bench of this Court in the case of B. B. Patil v. State : AIR1975 Bom143 has after taking a resume of several decisions on the point laid down the following as guiding factors (at p. 149):---

'Having regard to the aforesaid authorities and the relevant observations from each of the authorities which we have quoted above, it appears to us very clear

that mainly two criteria have been laid down by the decided cases in order to constitute the tribunal a Court. In the first place, the tribunal or an authority would be a Court if it is given power to give a definite judgment or a decision which has finality and authoritativeness that would bind the parties appearing before it so far as the right litigated before it are concerned and secondly the appointment of the tribunal or an authority as well as the source of its power must be judicial power of the State coming to it by the statute itself and then such tribunal or the authority would be a Court'.

As far as the HRC Order is concerned, it has been consistently held not only by the Full Bench of the Nagpur High Court but also by the Single Bench of this Court that the authorities under the HRC Order are judicial tribunals having all trappings of a Court. See (i) *Bhailal Jagdish v. Additional Deputy Commr., Akola* (1952 Nag LJ 613 : AIR 1953 Nag 89 and (ii) *Laxman Vithal v. Rajaram Narayan Pohurkar.* : AIR1979 Bom305 . In the latter decision it is held that findings recorded under the HRC Order on certain questions does exist between a judicial tribunal and a Court. The manor deciding factor is whether the Tribunal performs judicial functions and its powers are derived from the State under a Statute.

5. The scheme and salient features of the HRC Order may be noticed. It has been made by the State Government in exercise of the powers conferred by Section 2 of the C. P. & Berar Regulation of Letting of Accommodation Act, 1946. Section 6 of this Act makes the HRC Order effective notwithstanding inconsistent provisions of other enactments. Section 7 ousts the jurisdiction of the Civil Court, tribunal r revenue officer to question the order passed by Authorities under the HRC Order in respect of matters specified in Section 2 Contravention of the HRC Order is made offence under Section 8 and the Authorities are given sufficient powers to execute the order passed and also to secure compliance with the HRC Order under Section 9. Clause 2 (1) of the HRC Order defines a Controller as meaning an Officer appointed to exercise the powers of a Controller. Under Clause 3. it is the Collector of the district who has to appoint an Officer being a Gazetted Officer to be a Controller. In respect of the houses governed by the HRC Order, the Controller is called upon to decide whether the agreed rent is excessive and also to decide the fair rent. Under Clause 12 any dispute between the landlord and

tenant with relation to any increase of rent claimed under Cls. 9,10 and 11 of the HRC Order can be decided only by the Controller. Clause 12-A provides for prohibition of creation of sub-tenancy except as provided for. There is an embargo on the right of the landlord to determine the lease except with previous permission from the Controller and that too under certain specified grounds. The landlord desiring to obtain permission has to apply in writing and if after hearing the parties, the Collector (Controller) is satisfied about existence of either of the 9 grounds enumerated therein, he shall grant the necessary permission. If the landlord having obtained permission for bona fide occupation does not use the property for the specified purpose, the tenant can be restored possession of the house by the Controller. Similar is the case with relation to permission obtained for essential repairs or alterations. The Controller has power even to split up the tenancy in certain cases under Clause 13 (8) of the HRC Order, a power which does not even vest in a Civil Court. The landlord is obliged not to discontinue the supply of water or electricity to a house under occupation of a tenant under Clause 14-A. The tenant cannot convert a residential house or a portion thereof into a non-residential house except with the written consent of the landlord and the written permission of the Controller. Clause 16 provides for estimating the expenses required for the repairs which if granted by the Controller after holding enquiry, can be deducted from the rent payable and in case of urgency even the notice to the landlord can be dispensed with. Tenant is authorized to pay taxes payable by the landlord and deduct the same from the rent. Every application for getting various reliefs under the HRC Order has to be in writing under Clause 18-A. Written notices have to be served on the opponents. The Rent Controller can award costs for adjournment. In any proceedings before the Controller, appearance either through legal practitioner or agent is permitted under Clause 19. Cls. 20 empowers the Controller to determine the amount of costs and the manner of its payment and/or recovery. Any order passed by the Controller is appealable within a period of 15 days under Clause 21. Appeal lies to the Collector of the District. The Collector has to decide the appeal after hearing the parties. Review is also permitted. Review can be made suo motu as well as on an application by the party interested within 90 days of the passing of the Order. No Order can be varied or reversed without hearing the other side. The decision of the Collector and subject

only to such decision order, of the Controller becomes final, and no other authority has jurisdiction to question its correctness. State Government is empowered under Clause 21-A to invest any Officer with the powers of the Collector. The Collector can transfer appeal. Vacancy has to be intimated to the Collector and has to be filled in as contemplated under Clauses 24 24-A and 24-B. The tenancy of a certain persons holding office of profit under Government of Electricity Board is determined on the date of transfer or grant of leave other than casual leave or when the said Such a tenant is obliged to vacate the premises within 7 days. The Collector has been given discretion to extend this period up to 4 months. Every Order passed under Clause 23 (1), 24 or 24-A has to be served in the case of Corporation or firm in a manner provided for service of a summons in Rule 2 of Order XXIX or Rule 3 of Order XXX of the Code of Civil Procedure, as the case may be. Clause 23 empowers the Collector to take such steps and to use or cause to be used such force as may, in his opinion, be reasonably necessary for the purpose of securing compliance with, or for preventing or rectifying any Contravention of the HRC Order or for the effective exercise of such power. The Collector can direct the landlord or the tenant to submit certain necessary information to the Collector. The Collector has power to empower any subordinate officer not below the rank of Extra Assistant Commissioner to exercise certain powers.

6. It is thus clear that any adjudication under the HRC Order has to be proceeded by judicial enquiry which necessarily means, summoning and/or compelling the presence of parties and their witnesses and their examination on oath. The authorities perform certain duties which otherwise would have fallen on the ordinary courts. Legal practitioners are allowed and several complicated questions of law and fact are seriously argued and decided. It is a matter of common knowledge that fight before the authorities under the HRC Order is bitter than in Civil Court to the exclusion of which here certain judicial functions are performed. there is a power to execute the order and/or to secure compliance of provisions and to prevent its breaches. Regular appeal, its hearing, review all are provided for. The judgments are definitive and authoritative. above all the powers are derived from the State under a Statute and some of them are judicial powers of the State. It is thus apparent that authorities do possess several attributes which make

them Courts.

7. It may be noticed at this stage that at least two High Courts have taken a view that Rent Control Authorities under the respective Statutes are Courts (i) State v. Diwan Ramdas : AIR1969 Delhi319 and (ii) K. Chelapathi Rao v. B. N. Reddy (1968-2 Andh WR 587). Basic scheme in those enactments and the HRC Order does not appear to be much different. My attention was invited to the decision given in Ulahannan v. Pareed : AIR1978 Ker161 in which a view is taken that Section 5 of the Act of 1963 does not apply to proceedings under the Kerala Rent Control Act as the appellate authority constituted therein is not a Court. the decision proceeds on the assumption that it is not a Court and I find no reasons in are also not placed before me for comparison. With respect, I am unable to share the view taken therein taking into consideration the clear language of Section 29(2) of the Act of 1963.

8. In the result, the petition is allowed and the rule is made absolute. Impugned order is quashed and set aside. There shall be no order as to costs. the appellate authority is directed to decide the review application on merits. the parties are directed to appear before the appellate authority on 22-4-1983. Needless to mention that this is one of those matters which need expeditious hearing and disposal.

9. Petition allowed.

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