

Man Singh Patel and ors. Vs. Phool Singh and ors.

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Court : Delhi

Decided On : Mar-12-1970

Reported in : 7(1971)DLT14

Judge : B.C. Misra, J.

Acts : [Delhi and Ajmer Rent Control Act, 1952](#) - Sections 15(1)(3); [Delhi Rent Control Act, 1958](#) - Sections 57

Appeal No. : Civil Revision Appeal No. 682D of 1965

Appellant : Man Singh Patel and ors.

Respondent : Phool Singh and ors.

Advocate for Pet/Ap. : K.N. Kataria and; Ramesh Chander, Advs

Judgement :

B.C. Misra, J.

(1) The short question for determination in Civil Revision 682-D of 1965 and Civil Revision 685-D of 1965 is whether in view of section 57 of the Delhi Rent Control Act (Act 59) of 1958, section 15 of the [Delhi and Ajmer Rent Control Act, 1952](#) (Act 88) of 1952 (hereinafter referred to as 'the old Act') or section 20 of the Delhi Rent Control Act (Act 59) of 1958 (hereinafter referred to as the new Act) will apply to the facts of the cases. The new Act came into force on 9th of February, 1959, and

section 57 of the same reads as follows:

(1) The [Delhi and Ajmer Rent Control Act, 1952](#) (38 of 1952), in so far as it is applicable to the Union Territory of Delhi, is hereby repealed. (2) Notwithstanding such repeal, all suits and other proceedings under the said Act pending, at the commencement of this Act, before any court or other authority shall be continued and disposed of in accordance with the provisions of the said Act, as if the said Act had continued in force and this Act had not been passed. Provided that in any such suit or proceeding for the fixation of standard rent or for the eviction of a tenant from any premises to which section 54 does not apply, the Court or other authority shall have regard to the provisions of this Act : Provided further that the provisions for appeal under the said Act shall continue in force in respect of suits and proceedings disposed of there under.

(2) On a plain reading of the afore said provisions of law it is obvious that notwithstanding repeal of the old Act all suits or proceedings pending on the commencement of the new Act were directed to be continued and disposed of in accordance with the provisions of the old Act as if the said Act had continued to be in force and new Act had not been passed. The first proviso carved out an exception to the said provision in respect of a suit or a proceeding for fixation of standard rent or for eviction of a tenant, in which case the court or authority concerned is required to have regard to the provisions of the new Act. It is only in respect of the matters relating to fixation of standard rent or eviction of the tenant that the provisions of the new Act were directed to apply, and with regard to other matters pending under the Act application of the provisions of the new Act was not called for.

(3) The present case before me does not pertain to fixation of standard rent or eviction of a tenant, but it deals with the working out of the rights of the landlord and tenant in pursuance of an order of eviction passed by the High Court on 15th March, 1961, in the suit, and the present action relates to dispossession of the landlord and restoration of the possession of the premises to the tenant. It is significant that the objection based on the applicability of section 57 of the new Act had not been raised in the previous proceedings, although they were admittedly

pending on the date of the commencement of the new Act and the pending suit was decided by the trial court or 19th of March. 1989, by the lower appellate court on 15th December, 1990 and by the High Court on 15th March. 1961. Had the parties felt that the provisions of the new Act made slight modifications or changes in the relevant provisions of the old Act and were beneficial to them, their objection might have had some validity then but the same is of absolutely no avail at the stage of the present proceedings.

(4) I do not have the slightest doubt that the present proceedings instituted under sub-section

(3) of section 15 of the old Act of 1952 are governed by the provisions of the old Act, as they work out the rights of the parties arising out of the election of the tenant made under subsection

(1) of section 15 of the old Act at the time of the passing of the order of eviction on the grounds specified in clauses (f) and (g) of the proviso to subsection

(1) of section 13 of the old Act and since the tenant had in pursuance of his election delivered possession before the specified date, the landlord was under subjection

(2) of section 15 required to place the tenant in occupation of the premises or part thereof on the completion of the work of building or rebuilding of the premises. On the failure of the landlord to comply with the provisions of subsection

(2) of section 15, the remedy is provided to the tenant to approach the court under sub-section

(3) of section 15 of the old Act, and the application had been made within one year from the specified date and the tenant is entitled to obtain from the landlord occupation of the premises or part of the premises or such compensation as may be fixed by the court. In my opinion, the right and remedy mentioned in sub-section

(3) of section 15 are a continuation of the original suit and are analogous to proceedings for restitution initiated under section 144 of the Civil Procedure Code.

They however do not arise out of any variation or reversal of the decree or order for eviction but they work out the rights of the parties on the occurrence of the events mentioned in sub section

(3) of section 15 of the statute, which warrant rescission of the effect of the previous order of eviction and authorise the court to order restitution of the old or the newly constructed premises to the tenant. It has been urged before me that the proceedings under sub-section

(3) of section 15 of the old Act are in the nature of execution of the order of eviction passed under sub section

(1) of section 13 of the old Act, but it is not necessary for me to decide whether the said proceedings can technically be called execution of the decree or order of eviction, because the order or decree of eviction only recorded the election of the tenant under sub-section

(1) of section 15, but it did not give any direction to the landlord to either commence or to complete the work or deliver possession of the premises to the tenant, and that such directions are contained in sub-sections

(2) and

(3) of section

15. therefore, if the tenant had delivered possession of the premises on or before the specified date or he had been evicted in execution of the decree, there was nothing left to be done in execution department to carry out the terms of the decree. Under the law an application was necessary to be made within a period of one year from the specified date by the tenant under subsection

(3) of section 15 of the Act and I am of the view that this application was really in the nature of continuation of the suit and was intended to obtain restitution of the property in terms of the statute.

(5) The learned counsel for the petitioners laid great stress on the fact that the proceedings in the nature of the application under subsection (3) of section 15 of

the old Act were not pending on the commencement of the new Act within the meaning of sub-section (2) of section 57 of the new Act and, therefore, they could not be governed by the old Act and sub-section (2) of section 57 of the new Act was not attracted. I am not impressed by this argument. In the view I am taking that the application under sub-section (3) of section 15 of the old Act is in the nature of continuation of the suit already instituted, it is obvious that the same must be deemed to be pending on the commencement of the new Act and it remained pending until finally disposed of by the court. The word 'pending' in sub-section (2) of section 57 is used in generic sense. It was observed by Jessel M. R. in *re Clagett's Estate; Fordham v. Clagette* at p. 653 :

'WHAT is the meaning of the word 'pending' In my opinion, it includes every insolvency in which any proceeding can by any possibility be taken. That I think is the meaning of the word 'pending. Where the insolvent is dead and his estate is gone, it is not pending, but as long as he is alive the matter is pending in that sense. A cause is said to be pending in a court of justice when any proceeding can be taken in it. That is the test. If you can take any proceeding it is pending. 'Pending does not mean that it has not been tried. It may have been tried years ago. In fact, in the days of the old Court of Chancery we were familiar with cases which had been tried fifty or even one hundred years before, and which still pending. Sometimes, no doubt, they require a process which we call reviving but which the Scotch call waking up; but nevertheless they were pending suits, and all such causes have been transferred to the High Court of Justice under the words causes which shall be pending* in the 22nd section of the Judicature Act, 1873, when the word 'pending is used in this large sense.'

Applying the aforesaid test. I find that the civil court retained jurisdiction to dispose of the application of the tenant under sub-section (3) of section 15 of the old Act after it had recorded the election as provided by sub section (1) of section 15 at the time of passing the decree for eviction on the grounds mentioned in section 13 and after the landlord had failed to perform his duty laid down by the statute. What is excluded by section 57 of the new Act from being governed by the old Act is really entirely fresh proceedings intitled for eviction of tenant for a fixation of standard rent, which after the repeal of the old Act and commencement of the new

Act must obviously be moved under the new Act, but it has no application to the continuance of the suits, proceedings, appeals, revisions, executions or other proceedings for restitution or otherwise arising out of the suits initially instituted under the provisions of the old Act.

(6) The learned counsel for the appellant cited *Deb Narain Dutt v. Narendra Krishna and Brij Kishore and others v. Vishwa Mitter Kapur* and the learned counsel for the respondent cited *Gurbachan Singh v. Ram Sahani*, but I find that none of the said authorities is helpful in deciding the controversy raised before me. It has been strongly contended before me that the present proceedings are governed by section 20 of the new Act of 1958 I am unable to agree with this contention. The power of the Controller to order restitution under sub-section (3) of section 20 of new Act only arises if the Controller has passed an order for eviction on the grounds mentioned in clauses (f) and (g) of the proviso to sub-section (1) of section 14 of the new Act, and he has ascertained from the tenant the election specified in sub-section (1) of section 20 of the new Act. and has recorded the same in his order for eviction. In a case where the Controller had not passed any order for eviction under section 14 of the new Act and had not recorded the requisite election on the part of the tenant under sub-section (1) of section 20 of the same Act, it is impossible to accept the contention that he would acquire jurisdiction under sub-section (3) of section 20 of the new Act to order restitution in a matter which had never arisen before him and which had been decided by a civil court having entirely different, though similar, jurisdiction under the provisions of a different but similar statute.

(7) My attention has also been invited to section 50 of the new Act, which excludes the jurisdiction of the civil court, but the same pertains to fixation of standard rent or eviction of a tenant. It also applies to matters which the Controller is empowered by or under the new Act to decide. It is obvious that the Controller has not been given any power to pass orders under sub-section (3) of section 15 of the old Act and the civil court in the present case is not entertaining any suit or proceeding relating to the fixation of standard rent or eviction of a tenant, nor in respect of any matters which the Controller is empowered to decide under the new Act. The civil court is exercising the jurisdiction vested in it under sub-section (3) of

section 15 of the old Act and in the absence of a specific provision to that effect, the jurisdiction of the civil court cannot be taken away.

(8) I, therefore, hold that the order of the trial court has been passed within its jurisdiction and the case is governed by the provisions of sub-section (3) of section 15 and other provisions of the old Act of 1952, and I also find that the landlord is not entitled to take advantage of any change brought about by the language contained in section 20 of the new Act of 1958 and the rights and obligations of the parties will be governed by the old Act of 1952.

(9) There is no merit in both the civil revision petitions, and I dismiss the same leaving the parties to bear their respective costs.

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