

Krishnan Vs. Radha Lekshmi Amma

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Court : Kerala

Decided On : Aug-05-1971

Reported in : AIR1972Ker145

Judge : K. Sadasivan, J.

Acts : Kerala Buildings (Lease and Rent Control) Act, 1965 - Sections 11 and 23(1); Limitation Act, 1908 - Schedule - Article 173; [Code of Civil Procedure \(CPC\)](#), 1908 - Order 47, Rule 1

Appeal No. : Civil Revn. Petn. No. 430 of 1971

Appellant : Krishnan

Respondent : Radha Lekshmi Amma

Advocate for Def. : V. Harihara Iyer, Adv.

Advocate for Pet/Ap. : K.K. Bhaskaran, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

K. Sadasivan, J.

1. The revision petitioner is the tenant who was sought to be evicted by the landlord in R. C. P. 175/62 filed in November. 1962 in the court of the Rent Controller. Ernakulam, The ground relied on for eviction, was default in payment of rent. The petition was contested by the tenant stating that the landlord had agreed to convey the property to him for Rs. 6,000/- and it was in pursuance of that agreement that he did not Pay the rent; he has effected various Improvements in the building and also in the property and the value of such improvements would exceed the arrears of rent due to the landlord. There was, therefore, no arrears, in fact. He also contended that in case any arrears were found due from him he should be given 6 months' time to discharge it. On 12-8-1963 orders were passed by the Rent Controller for eviction of this petitioner. On 6-2-1964 the petitioner filed I. A. 406/64 for reviewing the order of eviction on the ground that the petitioner was a government servant and that he was not liable to be evicted as at the time of the passing of the order for eviction the notification declaring government servants not liable to be evicted, was in force. The notification was issued on 16-12-1961 and it was one issued under Section 11 (ii) (i) of the Rent Control Act. It declared all Central Government and State Government servants as belonging to the essential services and as such entitled to protection against eviction under orders of the Rent Control Courts. The review was allowed by the Rent Control Court. From that order the landlord filed an appeal. R. C. A. 31 of 1964 before the appellate authority. While the appeal was pending, the said notification was cancelled by the government by another notification. In the light of the second notification and also in view of the fact that the review itself was time barred, the appellate authority allowed the appeal and set aside the order of the Rent Control Court and restored the order of eviction. From that decision of the appellate authority the tenant filed revision (B. R. C. P. 48/661 before the District Judge who having dismissed it, he has come up in further revision.

2. Before going into the merits of the contentions, it has to be remembered that the revision petitioner-tenant had not taken specific objection to eviction, basing on the Notification which had conferred the right on government servants against being evicted under Rent Control proceedings . Except stating in a loose sense that he is a government servant with a large family to support, no specific Plea was raised on the strength of the Notification. In the circumstances there is force in the

contention of the respondent that the revision petitioner should be deemed to have tacitly waived his rights under the Notification, The petitioner's answer to this contention is that the Notification having conferred or vested the right in him, it was available to him even without his expressly pleading the right in the petition. I do not think that the Notification has conferred a vested right in him, not capable of being taken away under the cloak of waiver.

'A right is said to be vested when the right to enjoyment present or prospective, has become the property of some particular person or persons as a present interest, independent of a contingency. It is a right which cannot be taken away without the consent of the owner. Vested rights can arise from contracts, from statutes and from operation of law. A person, for example, who enters into a contract with another acquires a vested right in the performance of the contract and is entitled to claim that the contract should be performed in accordance with the terms thereof. Again, a right to compensation for property actually taken for public use and a right or title to property acquired by adverse possession are vested rights which cannot be impaired by subsequent legislation unless the statute contains clear words to that effect' (Bindra's Interpretation of Statutes 1970 Edition P. 875)'.

In the present case, the right conferred on government servants by the notification was only a contingent right, depending on the exigency of the situation. It is liable to be withdrawn, on the circumstances justifying its promulgation ceasing to exist, and that is what actually took place in the present instance. The notification issued on 16-12-1961 conferring the benefit upon government servants was cancelled by the subsequent notification of 20-12-1965. At that time the appeal challenging the order of the Rent Controller allowing the review was pending before the appellate authority. The case of the revision petitioner is that the appellate court had no jurisdiction to interfere with the order of the learned Controller allowing the review and dismissing the petition, basing on the notification which was in force at the time of the institution of the Rent Control Petition. In this case reliance was placed by the learned counsel on a Bench ruling² of this Court in *Hameed v. Ittoop*. 1970 Ker LT 501. There, the question for decision was different. That was a case that arose under Section 11(3) proviso of the Kerala Buildings. (Lease and Rent

Control) Act 2 of 1965 (shortly stated the Act) wherein the transferee-landlord is prevented from filing petition for eviction before the expiry of one year from the date of the transfer. There, the very Tight of presenting the petition before the expiry of the period is taken away. This Court held in the circumstances:

'It is only after the expiry of a period of one year from the date of the transfer inter vivos, that the transferee-landlord, gets the right to file, and the Kent Control Court the jurisdiction to entertain an application for eviction. The respondent-petitioner had no right to file the application for eviction and the Rent Control Court had no jurisdiction to receive the same before the expiry of one year from the date of the assignment under which respondent derived rights. This jurisdictional defect is not cured by the fact that the period of one year had expired by the time the Rent Control Court ordered eviction. Where the defect against institution of proceedings is of a jurisdictional nature subsequent events cannot cure the same.

It was thus a case of want of jurisdiction to receive the petition; whereas in the present case, the prohibition is against passing of an order of eviction, as the notification was a bar to such order. In other words, the effect of the notification is to postpone the eviction on account of the prevailing emergency and when the emergency disappears, it follows that the bar to passing of an order of eviction would also disappear'.

3. In *Burman v. Woods*. 1948-1 KB 111 Somerwell. L. J. observed.

'The Court has to direct its mind to the date of the proceedings and the evidence which it hears at the time, and clearly that is the date on which its order is drawn up.'

It was also observed in that case that the altered circumstances must be taken into consideration in moulding the relief. In the present case, when the cancellation notification came, the appeal against the Rent Controller's order giving effect to the exemption notification was only pending. The order in the proceeding can only be the final order passed by the appellate court. A matter pending before the appellate court has to be treated as a continuation of the proceeding in the trial court. The appellate court in the circumstances, ordered eviction on the ground

that the protection afforded to government servants by the first notification had been cancelled by the subsequent notification and the position as it existed at the time of the passing of the order by the appellate court was that government servants were also treated On the same footing as other people. The appellate court cannot shut its eyes to existing facts governing the matter before it.

4. Maxwell on The Interpretation of Statutes observes at page 17 Twelfth Edition:--

'It only applies to the specific rights given to an individual upon the happening of one or other of the events specified in the statute. Thus a tenant's general right to compensation for disturbance would not survive the repeal of the Agricultural Holdings Act. 1908: if it were to do so, the 'repealing' would in fact be ineffective. The Act of 1861 was repealed by the Crown Lands Act 1884 which, however, provided that notwithstanding the repeal 'all rights accrued' by virtue of the repealed enactment should remain unaffected. The Judicial Committee held that the mere right existing at the date of the repealing statute to take advantage of the provisions of the Act repealed was not a 'right accrued' within the meaning of the saving clause'.

5. At page 244 of the same volume the learned author would observe:

'If a statute is in its nature a declaratory Act. the argument that it is not to be construed so as to take away previously vested rights is inapplicable'.

Learned counsel for the revision petitioner took me to certain decisions in which retrospective effect of the notification cancelling the appointment of the Industrial Tribunal had arisen. In one of the cases viz., Jagatjit Cotton Mills v. Industrial Tribunal. AIR 1959 Punj 389, the facts were:--

'On 13-8-1955 the State Government Issued a notification by which an Industrial Tribunal was constituted for the whole of the erstwhile Pepsu State for a period of six months and one N was appointed its sole member. By another notification dated 3-9-1955 the disputes pending between the petitioner and its workmen were directed to be disposed of by the aforesaid Industrial Tribunal. These disputes were still pending when the period of six months, for which the Tribunal had been

constituted, expired. On 29-2-1956 a notification was issued by which the life of the Tribunal was extended for a period of six months from the date of the expiry of the previous period, namely, 13-2-1956. N's tenure was also extended for the same period. The Tribunal gave its award on 13-7-1956 and it was published in the Gazette.

Held, that the life of the Tribunal having come to an end on 12-2-1956, the notification of 29-2-1956 could not infuse fresh life in the Tribunal with effect from 13-2-1956. There could be no amendment or modification of the previous notification of 13-8-1955 within the meaning of Section 21 of the General Clauses Act with retrospective effect and the notification of 29-2-1956 could operate only prospectively. i.e.. from 29-2-1956. The notification of 29-2-1956 did not contain any mention of the dispute pending between the petitioner and its workmen having been referred to the aforesaid Tribunal, nor was any other notification issued making any such reference. According to the provisions of the Industrial Disputes Act (as it was in force on 29-2-1956). the appropriate Government had to refer the dispute to a Tribunal for adjudication (Section 10(1) (c)). No such reference having been made, it must be held that the award given on 13-7-1956 was null and void having been made by a Tribunal that had no jurisdiction in the matter'.

There the question was one of jurisdiction; whether the Tribunal was invested with the necessary jurisdiction to adjudicate on the matter referred to it If the notification operated prospectively only, it could not validate the award which was made after the expiry of the time specified in the earlier notification and before the date of the subsequent notification, during which period the Tribunal was functus officio and had no jurisdiction to act. But in the present case the question is whether at the time of the disposal of the appeal the situation conferring immunity on government servants from eviction had existed. The Supreme Court would observe in *Dayawati v. Inderjit*. AIR 1966 SC 1423 at p. 1426:

'Now as a general proposition, it may be admitted that ordinarily a Court of appeal cannot take into account a new law, brought into existence after the judgment appealed from has been rendered, because the rights of the litigants in an appeal are determined under the law in force at the date of the suit. Even before the days

of Coke, whose maxim—a new law ought to be prospective, not retrospective in its operation—is oft-quoted. Courts have looked with disfavour upon laws which take away vested rights or affect pending cases, Matters of procedure are, however, different and the law affecting procedure is always retrospective. But it does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of appeal must have regard to an intention so expressed, and the Court of appeal may give effect to such a law even after the judgment of the Court of first instance. The distinction between laws affecting procedure and those affecting vested rights does not matter when the Court is invited by law to take away from a successful plaintiff, what he has obtained under a judgment See *Quillter v. Mapleson*. 1882-9 QBD 672 and *Stovin v. Fairbrass*. 1919-88 LJKB 1004 which are instances of new laws being applied. In the former the vested rights of the landlord to recover possession and in the latter the vested right of the statutory tenant to remain in possession were taken away after judgment. See also Maxwell Interpretation of Statutes (11th Edition) pp. 211 and 213. and *K. C. Mukerjee v. Mst. Ramratan Kuer*, 63 Ind App 47 = AIR 1936 PC 49. where no saving in respect of pending suits was implied when Section 26 (N) and (O) of the Bihar Tenancy Act (as amended by Bihar Tenancy Amendment Act 1934) were clearly applicable to all cases without exception'. So also in the present case, the benefit conferred on government servants exempting them from the operation of the Kerala Buildings (Lease & Rent Control) Act 2 of 1965 was taken away at the time the matter was pending before the appellate authority. At page 211 of Maxwell on Interpretation of Statutes Eleventh Edition the Instance given is 'the provision of Section 14 of the Conveyancing Act, 1881 which relieved tenants against forfeiture for breach of covenant, was held to apply to a case where Judgment had been already given before the Act was passed and the landlord might have obtained possession, but for a stay of proceedings to give the tenant time to appeal'. The position is exactly the same here also. The notification which relieved government servants from eviction under the Rent Control proceedings was cancelled or withdrawn after the judgment was rendered by the Rent Controller and the matter was pending in appeal before the appellate authority. On the above analogy the subsequent notification must govern the

matter in meting out justice between the parties. The appellate court, in the circumstances must be held to have acted rightly in having declined to give relief to the petitioner, basing on the repealed notification.

6. The next question is regarding limitation. The review was filed on 6-2-1964 1. e.. five months and 25 days after the order. The contention is that having been filed out of time, the review petition should have been dismissed on that ground alone. I think, the contention is tenable. The review petition was filed under Section 23(1) (k) of the Act which provides:--

'Subject to such conditions and limitations as may be prescribed, the Accommodation Controller, the Rent Control Court and the appellate authority shall have the powers which are vested in a court under the Code of Civil Procedure 1908. when trying a suit in respect of the following matters

(k) to review its own order'.

The argument is that since no period of limitation is prescribed in the Rent Control Act or Rules it must be understood that review could be filed at any time. The further contentions are that neither the Limitation Act of 1908 nor that of 1963 would apply to Rent Control Act except when they are expressly made applicable. If the Limitation Act is held to apply on account of the modified provision in Section 29 (2) of that Act the present application will be within time under Section 30 (b) of the said Act which gives a period of 90 days next after the commencement of the Act (Limitation Act of 1963) or within the period prescribed for such appeal or application by the Indian Limitation Act of 1908 whichever period expires earlier. It is also contended that the provision in Section 23(1) of the Rent Control Act vesting the Rent Control Court and the appellate authority with the powers which are vested in a civil court in respect of certain matters prescribed in Clauses (a) to (k), will not convert such Tribunals into civil courts so as to attract automatically the provisions of the Limitation Act to the proceedings before them. These contentions have been repelled--and I think rightly--by the lower court. Under Section 20 of the Rent Control Act a revision from the order of the appellate authority is allowed to be filed in the High Court or District Court as the case may be at any time on the application of the aggrieved party and under Section 18 which deals with appeals

from the decisions of the Rent Controller to the appellate authority, the appeal is to be filed within thirty days from the date of the order. But under Section 23 no time-limit is prescribed for filing the review. But the powers vested in a civil court under the Code of Civil Procedure when trying a suit in respect of certain specified matters including power to review its own order, have been conferred on the Rent Control Court. The question, therefore, is whether in entertaining and trying a petition for review, the Rent Control Court is to be governed by the provisions of the Civil P. C. regarding review, and if the provisions of the Civil P. C. are made applicable, the further question would arise whether the law of limitation regarding review would also come into play.

7. The decision of the Supreme Court in *Vidvacharan Shukla v. Khubchand*. AIR 1964 SC 1099 is important in this connection. There the question that arose for decision was:--

'Whether an appellant under the Representation of the People Act was in law, entitled to exclude the time taken under order of the Election Tribunal Under Section 116-A(3) of the Representation of the People Act, the period of limitation for preferring an appeal in the High Court against the decision of the Election Tribunal is thirty days while under Article 156 of the Limitation Act. the period of limitation for appeals under the Code of Civil Procedure to a High Court except in cases of appeals against decrees in the exercise of its original jurisdiction is ninety days. in that context the applicability of Section 29(2) of the Limitation Act was considered. It was held by majority that under Section 116-A(2) of the Representation of the People Act the appeal by fiction is equated to an appeal filed under the Code of Civil Procedure in matters not only of exercise of powers, jurisdiction and authority but also in the matter of procedure to be followed from the date of receipt of the appeal to its final disposal, that it is thus an appeal in respect of which the Limitation Act has prescribed a period of limitation under Article 156 of the First Schedule, that the special Act namely, the Representation of the People Act of 1951 has prescribed a period of limitation different from the period prescribed therefor by the first schedule to the Limitation Act within the meaning of Article 29(2) of the Limitation Act, and that consequently Section 12 of the Limitation Act is attracted and the time taken for obtaining the copy of the order

could be excluded. Subbarao. J. quoted with approval the observations of Dixit, C. J. in Beharilal Chaurasiya v. Regional Transport Authority, AIR 1961 Madh Pra 75.

'A special law may provide a period of limitation and Schedule I may omit to do so. Nonetheless the special law would be different from the Limitation Act. Section 29(2) of the Limitation Act is not very happily worded. It must be construed so as to avoid absurdity. The expression 'a period of limitation different from the period prescribed therefor by the first schedule', occurring in Section 29(2) cannot be construed as meaning that Schedule I must also positively prescribe the period of limitation. Such a construction would not be in accordance with the intention of the legislature and would lead to an absurdity'.

The learned Judge also quoted the following observations of Sinha. C. J. in Kaushalya Rani v. Gopal Singh, AIR 1964 SC 260.

'Section 29(2) is supplemental in his character in so far as it provides for the application of Section 3 to such cases as would not come within its purview but for this provision' and concluded thus:

'This observation clearly supports the position that Section 29(2) would apply even to a case where a difference between the special law and Limitation Act arose by the omission to provide for a limitation to a particular proceeding under the Limitation Act.

I therefore, hold that in the instant case the Act provides a period of limitation different from that prescribed therefor by the First Schedule to the Limitation Act and, therefore, it is governed by Section 29(2) of the said Act'. The Andhra Pradesh High Court in Nagabhushanam v. Raghavayya, AIR 1968 Andh Pra 70 had to review the position in interpreting the expression 'at any time' appearing in Section 22 of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act. The point argued before the learned Judges in that connection was whether the expression 'at any time' connotes any period of limitation or is it tantamount only to an omission to fix a period of limitation. The court held:--

'Giving, therefore, the full effect to the meaning of the phrase 'at any time' we hold that the petitioner is entitled to file the revision petition under the Act at any time he chooses'. In our Act also the same expression appears in the provision regarding revision (see Section 20). So, a revision can be filed at any time the party chooses. If the Legislature wanted, the same or a similar expression could have been incorporated in Section 23 also so as to enable the party to file a review at any time he chooses. The omission to qualify the right of review in such a fashion namely that the right could be exercised at any time, must be taken to mean that the intention is that the party should not be allowed to exercise the right of review at any time he chooses. The omission to limit the time for the exercise of the right has been interpreted by the Supreme Court as providing a period of limitation different from that provided in the Limitation Act, bringing into play thereby the provisions of Section 29(2) of the Limitation Act. The right therefore, must be taken to be curtailed by the relevant provisions of the Limitation Act.

8. Learned counsel then contended that the power of review granted under Section 23(1)(k) is exercisable only by a court and the Rent Control Court being not a court under the Code of Civil Procedure, the power cannot be exercised by it. I do not see much force in this contention either. The Bombay High Court in *P. P. Studio v. E. Section I. Corporation*. AIR 1970 Bom 413 seems to have held that the Employees' Insurance Court is not a court for purposes of the Limitation Act. The question as to what constitutes a court properly so-called was considered at some length and certain tests were laid down by the Supreme Court in *Brijnandan Sinha v. Joti Narayan*. AIR 1956 SC 66. The Court pointed out that.

'the pronouncement of a definitive judgment is considered the essential 'sine qua non' of a Court and unless and until a binding and authoritative 'judgment can be pronounced by a person or body of persons it cannot be predicated that he or they constitute a Court. Their Lordships quoted with approval the following negative propositions in relation to the subject, enumerated by the Privy Council in *Shell Co. of Australia v. Federal Commr. of Taxation*. 1931 AC 275:--

(1) A tribunal is not necessarily a Court in the strict sense because it gives a final decision;

(2) Nor because it hears witnesses on oath;

(3) Nor because two or more contending parties appear before it between whom it has to decide;

(4) Nor because it gives decisions which affect the rights of subjects;

(5) Nor because there is an appeal to a Court;

(6) Nor because it is a body to which a matter is referred by another body'.

In dealing with the above negative circumstances the Bombay High Court continued to observe:--

'The pronouncement of a binding and authoritative judgment though absolutely essential, is thus not enough to constitute a tribunal a 'Court' in the strict sense. A further requirement is that the tribunal must have been invested with the inherent judicial power of the State and the pronouncement of a binding and authoritative judgment must be in exercise of that judicial power The E. I. Court exercises the powers of a Civil Court for the purposes of summoning and enforcing attendance of witnesses etc.. because those limited powers are specially conferred upon it by Section 78 of the Act and it is to be 'deemed to be' a Civil Court for certain specified purposes because the Act so provides. It has no power to execute its own orders. An order passed by it is enforceable 'as if it were' a decree passed in a suit by a Civil Court. It is thus clear that the E. I. Court does not satisfy the tests laid down by the Supreme Court in *Briinandan Sinha's case*. AIR 1956 SC 66. It is not, therefore, a 'Court' in the strict sense or in the accepted connotation of that term in legal parlance'.

9. Regard being had to the various sections of the Kerala Buildings (Lease & Rent Control) Act and the powers conferred on the various officers who constitute the hierarchy. I should think, there is little justification for the view that the Rent Controller is not a Court. Sec. 2(5) of the Rent Control Act defines 'Rent Control Court' as the court constituted under Section 3 (Section 3 deals with Government notification constituting the Rent Control Court). The term 'Court' is not defined in the Civil P. C. For purposes of the C. P. C. Court has been held to mean 'a place

where justice is judicially administered'. The definitions of 'Court' in the Evidence Act and of 'Court of Justice' in the Penal Code do not afford much assistance in construing the word 'Court' for purposes of the C. P. C. as the said definitions were framed for purposes of the said enactments only (See Chitaley's C, P. C.). The Madras High Court in Syed Hanifa v. Muhammad Khalifulla. AIR 1970 Mad 39 had to construe the term 'Court' with reference to the Madras Rent Control Act. The learned Judge would sum up his discussion thus:--

'When a question therefore, arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court. Applying these principles there is no doubt that the Rent Controller would be a 'Court'. He decides disputes in a judicial manner and declares rights of parties in a definitive judgment. Parties are entitled as a matter of right to be heard in respect of their claim and adduce evidence in proof of it. He has to decide the matter on a consideration of the evidence adduced and in accordance with law. In all matters before the Rent Controller there is a 'lis' in which persons with opposing claims are entitled to have their rights adjudicated in a judicial manner. The enquiry is not entrusted to an ad hoc tribunal. Applying all these tests it would appear that the Rent Controller is a 'Court'. But it may still be argued that the Rent Controller is not a civil, criminal or revenue Court'.

I am in respectful agreement with the above view. The Rent Controller, as different from the Employees' Insurance Court, is a court in the real sense of the term. All the attributes of a court are possessed by it. The further question whether it is a civil court need not detain us in these proceedings because under Section 23 the power of review is vested in a court under the Code of Civil Procedure when trying a suit in respect of various matters enumerated therein including the power to review its own order. Under Section 23(2) the Rent Control Court is to be deemed to be a civil court within the meaning of Sections 480 and 482 the Criminal P. C. But from that I do not think that it could be argued that the Rent Control Court, while functioning under the C. P. C. for specified matters, could be treated otherwise than as a civil court. In AIR 1964 SG 1099 cited earlier, their Lordships quoted with approval the following observations of Rajamannar C. J. of the Madras

High Court rendered in *Kandaswami Pillai v. Kannappa Chetty*, AIR 1952 Mad 186 (FB).

'It is well established that the Limitation Act and the Code are to be read together, because both are statutes relating to procedure and they are in *pari materia* and, therefore, to be taken and construed together as one system as explanatory of each other'.

In the Supreme Court case Section 116-A(2) of the Representation of the People Act, under which an appeal by fiction is equated to an appeal filed under the Code of Civil Procedure was the subject-matter of consideration. Their Lordships held that--

'Under Section 116-A(2) of the Representation of the People Act. the appeal by fiction, is equated with an appeal filed under the Code of Civil Procedure in the matter of not only the exercise of the powers, jurisdiction and authority, but also in the matter or procedure to be followed from the date of receipt of the appeal to its final disposal. For the aforesaid reasons I hold that the special law. namely the Act. prescribes a period of limitation different from the period prescribed therefor by the First Schedule to the Limitation Act within the meaning of Article 29(2) of the Limitation Act'.

In the present case, the powers vested in Court under the Code of Civil Procedure when trying a suit in respect of various matters enumerated therein including the power to review its own order, are conferred on the Rent Control Court and, those powers, as we have seen in the light of the pronouncements quoted above, are exercisable in accordance with the relevant provisions of the C. P. only. Power of review is conferred under Order 47, Rule 1, Civil P. C. and that has to be read alone with the relevant provision of the Limitation Act which prescribes a period of ninety days for preferring the review. The application for review in the present case, was brought after more than five months of the pronouncement of the order. It was thus barred.

10. No other point arises. The revision petition is dismissed.

