

Sat Pal Vs. Smt. Sunaina Devi

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Court : Himachal Pradesh

Decided On : Aug-03-2006

Reported in : 2007(1)ShimLC102

Judge : V.K. Gupta, C.J. and; Surjit Singh, J.

Appellant : Sat Pal

Respondent : Smt. Sunaina Devi

Judgement :

V.K. Gupta, C.J.

1. Because of the order passed on 24.7.2006 this case has come up to the Division Bench for hearing and disposal.
2. The background in which this matter has come up for consideration has been spelt out in details in the order dated 18.7.2006 passed by the Single Judge of this Court. To re-capitulate and to appreciate the subject-matter of controversy involved in this petition in its proper perspective, it shall be advantageous to take note of some brief but salient features of the case.
3. Under Section 24(1) (b) of the Himachal Pradesh Urban Rent Control Act, 1987 (1987 Act, for short) , it has been provided that any person aggrieved by an order passed by the Controller, may, within fifteen days etc. prefer an appeal to the Appellate Authority having the jurisdiction to hear and dispose of the appeals.

4. The only exception with respect to the aforesaid right to prefer an appeal is the exclusion of the orders passed under Section 16 of the 1987 Act. Clause (b) is of course subject to Clause (a) of Sub-section (1) of Section 24 which lays down that the State Government may by a general or special order or by a notification issued in this behalf confer on such officers and authorities as it thinks fit the powers of the Appellate Authorities for the purposes of the Act with respect to such areas as are specified in the said notification, or for such classes of cases as may also be specified in the said notification. Undoubtedly, therefore, the right to file appeals under clause(b) is subject to the appointment of Appellate Authorities by the State Government under Clause (a) and additionally with respect to such cases or classes of cases, as may be specified in the notification issued under Clause (a).

5. In the past, many cases came up in this Court where, in various judgments pronounced by this Court from time to time, this Court on a question of fact found that no notification under Clause (a) had been issued by the State Government, but at the same time this Court by noticing, the provisions of Punjab Urban Rent Restriction Act, 1947 and subsequently the East Punjab Urban Rent Restriction Act, 1949 (1949 Act, for short), found, on a question of fact, that even though no notification had been issued by the State Government under Section 24 (1) (a) of 1987 Act, in terms of the 1949 Act, which at the relevant time was applicable to Himachal Pradesh, a notification was issued on 15.3.1950. The text of this notification read as under:

In exercise of the powers conferred by Sub-clause (a) of Clause (1) of Section 15 of the East Punjab Urban Rent Restriction Act, III of 1949, as applied to Himachal Pradesh, and in supersession of this Administration Notification No. A/5/92/48-II, dated the 24th February, 1949, all the District and Sessions Judges in Himachal Pradesh are hereby invested in respect of the Urban areas in their respective existing jurisdictions with the powers of appellate authorities for the purposes of the said Act with regard to orders made by the Rent Controllers under Sections 4, 10, 12 and 13 of the said Act.

6. As is evident from a reading of the aforesaid notification, this was issued under Sub-clause (a) of Clause (1) of Section 15 of the 1949 Act. All the aforesaid

judgments of this Court took the view that the aforesaid Section 15 of 1949 Act empowering the State Government to issue notification was in pari materia to Section 24 of 1987 Act. Relying upon Section 23 of the Himachal Pradesh General Clauses Act, 1968, it was held accordingly by this Court that in the absence of any notification having been issued under 1987 Act, the aforesaid notification dated 15.3.1950 was to hold field and be treated as applicable. Since the said 1950 notification specified only the orders passed under Sections 4, 10, 12 and 13 of 1949 Act as the only orders in which appeals could be filed, and since these Sections of 1949 Act were in pari materia to Sections 4, 11, 13 and 14 of 1987 Act, this Court has consistently been taking the view that under 1987 Act, orders passed by the Rent Controllers only under Sections 4, 11, 13 and 14 of 1987 Act were appealable and that no other orders were appealable.

7. In CMP (M) No. 116 of 2006, relying upon a detailed judgment of late V.M. Jain, J., this Court in its Judgment dated 9.6.2006 accordingly took the same view and also held in consonance with other judgments by various judges of this Court in the past that no notification under Section 24 (1)(a) of 1987 Act having been issued and the aforesaid notification issued on 15.3.1950 under the aforesaid 1949 Act being applicable and held that by virtue of Section 23 of Himachal Pradesh General Clauses Act, 1968, the appeal preferred by the petitioner in that case before the District Judge was not maintainable. In the aforesaid judgment (rendered on 9.6.2006), this Court by way of a passing reference took note of the 'failure' of the State Government in not issuing only notification under 1987 Act despite lapse of almost two decades. This Court noted its concern and accordingly directed the State Government to issue a notification under 1987 Act and ordered that the Law Secretary, Government of Himachal Pradesh, shall process the matter and file affidavit of compliance.

8. On 18.7.2006 when the matter came up before this Court to receive the compliance report from the Law Secretary, it was noted that the Law Secretary had informed that actually a notification under 1987 Act had been issued as far back as on 26.5.1988. In the affidavit of compliance filed by the Law Secretary, a copy of the said notification was also enclosed, which for ready reference is being reproduced hereunder and reads thus:

Authoritative English Text of notification No. LSG-A(3)-1/71-II, dated 26.5.88 as required under Article 348 (3) of the Constitution of India.

Shimla-2, the 26th May, 1988.

No. LSC-A(3)-1/71-II.-In supersession of all the previous notifications issued by this Government in this behalf and in exercise of the powers vested in him under Section 24 of the Himachal Pradesh Urban Rent Control Act, 1987 (Act No. 25 of 1987) the Governor, Himachal Pradesh, with the prior approval of the Hon'ble High Court of Himachal Pradesh is pleased to confer on all the District and Sessions Judges/Additional District and Sessions Judges the powers of appellate authorities for the purposes of aforesaid Act, within their respective jurisdictions, with immediate effect.

By order,

Sd/-

Secretary.

9. It is in the aforesaid background that in the order dated 18.7.2006 this Court noted that a piquant situation had arisen inasmuch as the Government having issued a notification under 1987 Act as early as in the year 1988, the successive judgments of this Court had failed to take notice of this fact and had been relying upon a notification issued on 15.3.1950 under 1949 Act.

10. Two issues arise for consideration at this stage:

1. What would be the import, relevance and operational applicability of the judgments rendered in the past by this Court in cases arising under 1987 Act without noticing the aforesaid 1988 notification issued under 1987 Act and proceeding to dispose of the matters on the basis of the aforesaid 1950 notification issued under 1949 Act.

2. Whether 1988 notification conforms with the requirement of Section 24 (1)(a) read with Clause (b) thereof and has it been properly issued.

11. In so far as the first issue is concerned, the learned Counsel for the parties as also the learned Senior Counsel Mr. Bhupender Gupta as well as Mr. K.D. Sood, Advocate, submit that all the previous judgments should be declared to be per incuriam because these judgments did not take note of 1988 notification and because these proceeded on the premise that no notification under Section 24 (1)(a) had been issued. They also submit that even though we may hold these judgments as per incuriam we may also pass an order that the cases decided in the past by this Court on the aforesaid premise should not be reopened and that we should bring a quietus to all such cases. We agree to this suggestion of the learned Counsel for the parties and we ourselves are also of the view that the judgments or the cases decided in the past based upon the aforesaid view of this Court should not be opened. This of course is subject to the only exception that where, based upon the aforesaid view, Revision Petitions are still pending in this Court, these Revision Petitions can be dealt with and disposed of in the light of the view that we now have taken and also propose to take.

12. Coming to the second issue relating to the correctness of 1988 notification, we find that even though on a plain reading of Section 24 (1) (a) it is the statutory obligation of the State Government to issue a notification and appoint appellate authorities and also to specify the areas in which they shall be exercising jurisdictions as such appellate authorities, because of the use of the word 'or' occurring in Clause (a) perhaps it is not the statutory obligation of the State Government to mandatorily specify classes of cases in which the Appellate Authorities shall be exercising such jurisdiction. If, therefore, the notification issued under Clause (a) supra does not specify the classes of cases in which the appellate authorities shall be exercising appellate jurisdiction, in other words if such notification does not specify the classes of cases in which the appeals can be filed before the appellate authorities, under Clause (b) of Sub-section (1) of Section 24 of 1987 Act, on its plain reading, all the orders passed by the Rent Controllers, except the orders passed under Section 16, become appealable. For ready reference we reproduce hereunder Clauses (a) and (b) of Sub-section (1) of Section 24 of 1987 Act:

24(1)(a) The State Government may, by a general or special order, by notification, confer on such officers and authorities, as it thinks fit, the powers of appellate authorities for the purposes of this Act, in such area or in such classes of cases as may be specified in the order.

(b) Save as otherwise provided in this Act, any person aggrieved by an order passed by the Controller, except the orders for the recovery of possession made by the Controller in accordance with the procedure prescribed under Section 16, may, within fifteen days from the date of such order or such longer period as the appellate authority may allow for reasons to be recorded in writing, prefer an appeal in writing to the appellate authority having jurisdiction. (In computing the period of fifteen days, the time taken to obtain a certified copy of the order appealed against shall be excluded.)

13. As can thus be seen, on its plain reading, Clause (b) clearly suggests that every order passed by the Controller is appealable. Of course the only exception to this is the orders passed by the Controller under Section 16 of the 1987 Act. It is a well established principle of law, by now acknowledged by all, that right of appeal is the creation of the Statute. If a Statute prescribes about the filing of an appeal, the right to file appeal is traced to such a prescription in the Statute. If the Statute does not prescribe about the filing of an appeal, no one has the right to file an appeal. On this hypothesis therefore it can safely be said that the creation of right to file an appeal in a Statute brings with it the scope, the extent and the ambit of such right. Whether the right is expanded or it is enlarged or the right is restricted or it is narrowed can be gathered only from a look at the Statute prescribing and creating a right of an appeal.

14. In the present case, as we have seen, Clause (b) does not contain any restrictions or constraints about the exercise of the right to appeal against orders passed by the Rent Controller. This can thus be termed as a plenary appeal jurisdiction because this right created by Clause (b) does not specify of any restriction nor does it circumscribe the extent of appellate remedy. There is no vagueness or ambiguity in the language employed in Clause (b). Clause (b) is very clear and categorical while prescribing and creating the right to file appeal against

all orders passed by the Rent Controller except the orders under Section 16 of the 1987 Act.

15. Even though under Clause (a) it is not obligatory upon the State Government to specify the classes of cases, yet we have no hesitation in holding and declaring that since this clause does provide that the State Government may specify the classes of cases in which appeals can be preferred, not specifying the classes of cases in the Notification issued under Clause (a) may lead to an anomalous situation because in the absence of such a specification or prescription in the Notification on the interpretation that we have given to Clause (b) all orders passed by the Rent Controller become automatically appealable.

16. Clause (b) thus is subject to Clause (a) in the sense that even though under Clause (b) all orders passed by the Rent Controller are appealable, except of course orders passed under Section 16, this plenary appellate jurisdiction gets restricted and becomes subject to the limited prescriptions of the right to appeal, if such a prescription is created under Clause (a). In other words, if a Notification issued under Clause (a) limits the types of appeals or prescribes that appeals can be filed only against such orders as are mentioned in the Notification, the appellate right and the exercise of appellate jurisdiction prescribed under Clause (b) gets curtailed and restricted to that extent.

17. In the aforesaid backdrop, we find that a bare reading of the 1988 Notification in the light of the contemporaneous correspondence exchanged between the State Government and the High Court clearly reveals that apparently the issue of specifying the classes of cases in the said Notification escaped the attention and consideration by the State Government. Even though we have taken the view that specifying the classes of cases in the Notification issued under Clause (a) is not mandatory, we hold that in the discharge of its statutory obligations it is indeed mandatory for the State Government to accord its due consideration to the issue whether, in public interest it is advisable and desirable or it is not advisable and desirable to specify the cases or classes of cases in which alone appeals can be filed and if yes, which are those cases or classes of cases in which the appeals can be filed. To that limited extent therefore our clear finding is and we have no

hesitation in holding and taking this view that the State Government failed to discharge its said statutory obligation of according due consideration to this issue in public interest.

18. We may take this opportunity of expressing our view that, taking a cue from 1950 Notification, the State Government while according its due consideration to the aforesaid aspect should indeed take a conscious decision whether public interest demands that right of appeal under Clause (a) should be unrestricted and unchannelised, in the sense that all orders should be appealable, or it should be circumscribed and restricted only to such cases or classes of cases which indeed, under the scheme of the 1987 Act be made appealable. Expeditious disposal of case under the 1987 Act and total avoidance of frivolous and vexatious methods adopted by way of delaying tactics should be done away with at all costs. The endeavour always is to ensure that the petitions filed under the 1987 Act are disposed of very very quickly and that no one is allowed to misuse the plenary appellate right or the appellate jurisdiction.

19. Our attention was drawn by way of passing reference to Sub-section (5) of Section 24 of 1987 Act relating to the revisional jurisdiction of the High Court.

20. By now, it is well established by a long catena of judicial pronouncements that where, against an order there is a remedy available to an aggrieved person of filing a statutory appeal in an appellate Forum, even if the Statute does create the right of filing a Revision, in normal circumstances it is not open to such an aggrieved person to by-pass the remedy of filing the appeal and to avail of the remedy of filing a Revision Petition. Similarly, based on this sound principle of law Revisional Courts do not entertain Revision Petitions which relate to or arise out of, or are from such orders which under the Statute are appealable. It therefore can safely be said on the aforesaid premises that Sub-section (5) even though empowers the High Court to exercise its revisional jurisdiction, the exercise of such jurisdiction is subject to all self contained and self guided limitations and the aforesaid rule of prudence that the aggrieved persons are required to first avail the remedy of filing the appeal.

21. Based on the aforesaid reasoning, even though we are of the view that under Clause (a) it was not mandatory for the State Government to specify the classes of cases in which appeals are to be preferred, the State Government was under an obligation to accord its consideration to this aspect and take a conscious decision whether to specify classes of such cases or not in the said Notification. Because the State Government did not accord such consideration while issuing the aforesaid 1988 Notification, we quash the Notification as being ultra-vires Section 24 (1)(a) of 1987 Act and direct the State Government, in consultation with the High Court on its administrative side to issue a fresh Notification in the light of aforesaid observations.

(V.K. Gupta),

Chief Justice.

Surjit Singh, J.

1. With due deference, I disagree with the order dictated by My Lord Hon'ble the Chief Justice, only with regard to the view taken by his Lordship that unless the State Government specifies in the notification, the orders which are appealable, every order passed by the Rent Controller shall be appealable, in view of the provision of Clause (b) of Sub-section (1) of Section 24. The reasons are as follows:

1. Under Clause (a) of Section 24 (1), what the State Government may specify in the notification is the area or the classes of cases in which the Officers, upon whom the appellate powers are conferred, may exercise those powers. The provision does not say that the Government may specify which orders are appealable. By classes of cases, what I understand is the cases of different type which are brought before the Rent Controllers, like eviction from tenanted premises, fixation of fair rent, revision of fair rent, deposit of rent, restoration of amenities, restitution of possession to the tenant where the landlord, after obtaining order of ejectment, does not put the premises to the use for which the same had been got vacated etc. To me, it appears that the Legislature intended that the Government may, if it so wishes, specify as to in which classes of cases

which Officers upon whom the powers of appeal are conferred shall be exercising those powers, e.g. the Government may specify that in cases of eviction on certain statutory grounds only one authority may exercise the power and in respect of eviction on other statutory grounds another authority may exercise power or say in all cases of eviction one authority may exercise the power and in cases of other orders, say for fixation of fair rent, restoration of amenities, deposit of rent etc. another authority, with lesser experience, may exercise such powers.

2. No doubt, Clause (b) of Sub-section (1) of Section 24 when read, as it is, gives an impression that any order passed by the Rent Controller may be appealable but the words used in the provision are that 'any person aggrieved by an order passed by the Controller' do not by themselves suggest that every order passed by the Rent Controller will be appealable unless the Government specifies which orders are appealable. If it were the intention of the Legislature it could have employed the words that every order or any order passed by the Rent Controller will be appealable.

3. Clauses (a) and (b) of Sub-section (1) of Section 24 need to be read together as part of the same provision and not in isolation and when so read they, in my view, leave no doubt that the word 'order' used in Sub-clause (b) of Section 24(1) means an order, which the Rent Controller has the jurisdiction to pass under the provisions of the Rent Control Act, i.e. an order for eviction, fixation of fair rent, revision of fair rent, deposit of rent, etc. etc. It may be noticed that only those provisions of the H.P. Urban Rent Control Act, speak of passing of an order by the Rent Controller, which pertain to the aforesaid matters, i.e. eviction of tenant, fixation of fair rent, revision of fair rent, deposit of rent, restoration of amenities or restitution of premises to the tenant, etc. etc. and, therefore, the word 'order' occurring in Section 24 (1)(b), in my view, is required to be read as referring to such orders only.

4. Normally, whenever the right of appeal is created by any statute, the right is given only to challenge the final order and not the interlocutory orders and, therefore, the present provision, in my view, also needs to be interpreted to mean that only final orders are appealable and not each and every order. For

interlocutory orders, provision is there under Sub-section (5) of Section 24, which provides that on an application by any aggrieved party, the High Court may examine the records relating to any order passed or proceedings taken under this Act. No such provision is there in the East Punjab Rent Restriction Act, 1949, notification issued whereunder is referred to in the order dictated by the Hon'ble the Chief Justice.

5. I do not think Section 24 (1) (a) authorizes the State Government to determine which orders passed by the Rent Controller are appealable. A plain reading of Section 24 (1)(a) shows that what the State Government has been authorized to do is-

(i) to issue a notification conferring the powers of appellate authorities for the purposes of the Act, on such Officers or authorities, as it thinks fit; and

(ii) to specify in that order:

(a) the area; or

(b) the classes of cases in respect of which such powers are to be exercised.

In the case of (ii) above, the Government can either specify the area or the classes of cases in which the appellate power is to be exercised by the Appellate Authority and not the both, as per literal interpretation of the provision. To me it appears that the purpose of specifying the area or the classes of cases is to circumscribe the jurisdiction of notified authorities either in terms of area or the classes of cases but not both. It is true that sometimes word 'or' is intended to be used as a disjunctive and a conjunctive both and even if it be used as such here that too will not, in my opinion, authorize the State Government to notify which orders of Rent Controller are appealable under Section 24(1)(b). The reasons are:

(a) State Government is authorized under Section 24(1) (a) to specify in which particular classes of cases the notified appellate authority may have the jurisdiction and the classes of cases, as noticed in reason (1) above are the type of cases that are cognizable by the Rent Controller (under the Act) like ejectment cases, fair rent fixation cases, restoration of amenities cases etc. etc. The

Government is not authorized to determine against which order an appeal will lie or against which order it will not lie;

(b) Even if it be assumed that reference to the phrase 'classes of cases', in Section 24(1)(a) means orders and that the Government has the authority to determine and notify which orders are appealable, then the provision itself will be bad on account of excessive delegation, because the right to appeal can be created only by statute and if that is so it cannot be left to the unguided discretion of the executive to determine which orders will be appealable and which ones not; and

(c) Right to appeal is created by Section 24 (1)(b). It provides that appeal against 'an order' of Rent Controller shall lie to the Appellate Authority notified by the Government under Section 24 (1) (a). The phrase 'an order' appearing in Section 24(1)(b) is required to be interpreted by the Courts, unaided by the notification, issued by the Government under Section 24 (1)(a).

2. As regards the remaining part of the order dictated by the Hon'ble the Chief Justice, I agree with the same.

Order of the Court

In view of the dissenting opinions of the members of this Bench with respect to the interpretations put upon Clauses (a) and (b) of Sub-section (1) of Section 24 of 1987 Act, the matter is referred to a learned third Judge of this Court for decision.

List before the learned third Judge on 8th August, 2006.

Matter referred to Third Judge.

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