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SH. DEWAN CHAND BHALLA

v.

DR. ASHOK KUMAR BHOIL

JULY 22, 1994

B

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Himachal Pradesh Urban Rent Control Act, 1987 :

Section 14(3)(a)(iv)

C

Tenant—Govt., employee—Allotment of reasonable sufficient Government residential accommodation to—Right of landlord to seek eviction—Such a tenant cannot resist landlord's eviction petition on the ground that he lost the allotted residence by surrender.

D

Constitution of India 1950 : Article 136.

Appeal by special leave—Reagitation of issue against concurrent findings of fact—Permissibility of.

E

The appellant-tenant, a Government servant, was allotted Government residence by the State of Himachal Pradesh. The Respondent-landlord filed a petition before the Controller under Section 14(3)(a)(f) of the Himachal Pradesh urban Rent Control Act, 1971 which entitled a landlord to get possession of a residential building from his tenant when such tenant was allotted a residence which was reasonably sufficient for

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his requirements. The appellant contended that he could not be evicted because (i) the residence allotted to him by the Government was not reasonably sufficient for his requirements and (ii) he has surrendered the residence allotted to him. Rejecting both the contentions the Controller allowed the landlord's application and directed the appellant to hand over possession of residential building to the Respondent. On appeal by tenant

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the appellate authority affirmed the Controller's order. The appellant filed a revision petition before the High Court of Himachal Pradesh. During the pendency of the Revision Petition, the Himachal Pradesh Urban Rent Control Act, 1987 came into force and consequently the petition had to be decided under the corresponding provision in section 14(3)(a)(iv) of the

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1987 Act. The High Court dismissed the Petition holding that (i) the

material on record clearly established that the allotted residence was reasonably sufficient for appellant's requirements; and (ii) he cannot resist grant of such application on the ground of having lost the allotted residence by surrender. A

In appeal to this Court, Counsel for the appellant was not permitted to address his arguments on the finding that the residence allotted to tenant by the Government was reasonably sufficient for his requirements as it was not a matter which could be permitted to be reagitated in an appeal by special leave under Article 136 of the Constitution. As regards the other ground it was contended that the High Court erred in holding that the landlord would be entitled to get possession under section 14(3)(a)(iv) of the 1987 Act even where the residence allotted to the tenant by the Government was surrendered and lost by him before eviction application was made inasmuch as that view had the effect of taking away the protection given by the 1987 Act to a tenant from eviction of the tenanted building. B C

Dismissing the appeal, this court D

HELD : 1. The High Court's view does not call for interference in this appeal. A tenant of a residential building who being allotted a residence reasonably sufficient for his requirements becomes liable for eviction from the residential building on an application made by his landlord under section 14(3)(a)(iv) of the Himachal Pradesh Urban Rent Control Act, 1987 cannot resist the grant of such application on the ground that he lost the allotted residence by surrender made either before or after the filing of such application. [93-A, B] E

2. No doubt, the 1987 Act seeks to protect the tenants from eviction from the tenanted lands or buildings by their landlords. Section 14(1) of the 1987 Act itself forbids eviction of a tenant in possession of a building or rented land even in execution of a decree passed or otherwise. But, it cannot be overlooked that that section itself declares that a tenant could be evicted from the tenanted building or land if such eviction is permitted under any other provisions of the 1987 Act and removes the cloak of protection given to certain tenants. Section 14(3)(a)(iv) is one of such other provisions in the 1987 Act. [91-C, D] F G

3. Clear and unequivocal words employed in section 14(3)(a)(iv) give H

A not scope for a tenant to say that the accrued entitlement or right of the landlord to get back possession of the residential building from him under the provision is lost when he parts with possession of residence which had come to him in one or the other ways referred to therein. To hold that the provision enables the tenant to make his landlord lose his right to recover possession of the residential building accrued thereunder by the tenant
 B parting with possession of residence got by him either before or after the application is made by the landlord under the provision would amount to saying that the tenant, by having recourse to certain means, could defeat the accrued right of the landlord to get possession of the residential building. [92-D to F]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3019¹ of 1990.

From the Judgment and Order dated 5.4.90 of the Himachal Pradesh High Court in C.R.P. No. 111 of 1986.

D Uma Datta for the Appellant.

E.C. Agrawala for the Respondent.

The Judgment of the Court, was delivered by

E **VENKATACHALA, J.** The question that needs our consideration and decision in this appeal by special leave is : can a tenant of a residential building who is allotted a residence reasonably sufficient for his requirements and becomes liable for eviction from that residential building on an application made by his landlord under Section 14(3)(a)(iv) of the
 F Himachal Pradesh Urban Rent Control Act, 1987 - 'the 1987 Act' - resist grant of such application on the ground of having lost the allotted residence by surrender.

Antecedent facts are briefly these :

G The appellant was a tenant of a residential building, Shop No. 6 Second Floor, Chhota Shimla Bazar, Shimla under its owners. When that residential building was sold by its owners to the respondent, under a registered sale deed dated 23.9.1982, the appellant became the tenant of the respondent in respect of it, by accepting him as his landlord. However,
 H by then, the appellant was in possession of a residence allotted to him as

a Government servant of the State of Himachal Pradesh. Since the provision in S.14(3)(a)(f) of the Himachal Pradesh Urban Rent Control Act, 1971 - 'the 1971 Act' entitled a landlord to get possession of a residential building from his tenant when such tenant was allotted a residence which was reasonably sufficient for his requirements, the respondent (landlord) issued a notice dated 20.10.1982 to the appellant (tenant) calling upon him to give possession of the residential building according to the said provision. But, the appellant did not give possession of the residential building to the respondent as required by the said notice. Instead, the appellant chose to lose possession of the allotted residence by surrendering it to the Government. The respondent who did not get possession of the residential building from the appellant despite notice issued in that regard, made an application under section 14(3)(a)(f) of the 1971 Act before the Controller seeking eviction of the tenant from the residential building. However, the appellant resisted grant of that application on two grounds : (i) that the residence which was allotted to him for his residence being not reasonably sufficient for his requirements he could not be evicted from the residential building under Section 14(3)(a)(f) of the 1971 Act, and (ii) that the residence allotted to him, when had been lost by surrender, he could not be evicted from the residential building under Section 14(3)(a)(f) of the 1971 Act. The grounds on which the application of respondent was resisted did not find favour with the Controller and were rejected by him as unmerited and untenable by his order dated 10.4.1985 with a direction given thereunder to the appellant to put the respondent in possession of the residential building. That order of the Controller though impugned by the appellant in an appeal filed before the appellate authority under the 1971 Act that appeal was dismissed resulting in affirmation of the order of the Controller. Thereafter, on 6.4.1986 the appellant filed a revision petition before the High Court of Himachal Pradesh, which was the Revisional Authority under the 1971 Act impugning the order of the Controller, as well as, the Appellate Authority.

When the said revision petition filed under the 1971 Act was pending disposal by the Revisional Authority - the High Court, the 1987 Act was brought into force with effect from 17.11.1971, the date on which the 1971 Act had come into force. The 1987 Act which repealed the 1971 Act, as well, required disposal of every application, appeal, or revision petition, pending decision under any provision of the 1971 Act before the Controller. Appellate Authority or the Revisional Authority, in accordance with

- A the corresponding provision of the 1987 Act as if the corresponding provision contained in the latter Act was at the relevant time, in force. Therefore, the High Court, before which the revision petition of the appellant was pending disposal as a Revisional Authority under the 1971 Act had to decide that revision petition in accordance with the provision in Section 14(3)(a)(iv) of the 1987 Act. Thereafter, the High Court which
- B heard the Revision petition of the appellant, dismissed the same by its considered order dated 5.4.1990. On the first ground of resistance which had been put forth by the appellant against the grant of application of the respondent for eviction, to wit, that the residence which had been allotted to the appellant as a Government servant, was not reasonably sufficient for
- C his requirements, the High Court has found it to be unavailable to the appellant on its view that the material on record clearly established that the allotted residence was reasonable sufficient for his requirements. Coming to the second ground of resistance put forth by the appellant against the grant of application of the respondent for eviction, the High Court has
- D found that the appellant who was allotted a residence reasonably sufficient for his requirements and became liable for eviction from that residential building on an application made by the landlord under section 14(3)(a)(iv) of the 1987 Act cannot resist grant of such application on the ground of having lost the allotted residence, by surrender, and hence that ground of resistance was untenable. The appellant has assailed the said order of
- E dismissal of his revision petition by the High Court by filing the present appeal by special leave. At the hearing of the appeal by us we did not permit the learned counsel for the appellant to address his arguments relating to rejection of first ground of resistance put forth by the appellant-tenant against the grant of respondent's application for eviction since the
- F rejection of that ground was based on its factual finding that the residence allotted to him by the Government was reasonably sufficient for his requirements and that it was not a matter which could be permitted to be reagitated in an appeal by special leave under Article 136 of the Constitution.
- G However, as the arguments sought to be addressed on behalf of the appellant-tenant as regards second ground of resistance of the appellant put forth against the grant of application of the respondent filed under section 14(3)(a)(iv) of the 1987 Act but rejected by the High Court, we allowed the learned counsel for the appellant to argue since the argument
- H related to construction to be placed on section 14(3)(iv) of the 1987 Act.

The High Court, it was argued by learned counsel for the appellant, was not right in its view that a landlord would be entitled to get possession of the residential building in occupation of his tenant by making an application under section 14(3)(a)(iv) of the 1987 Act even where the residence which had been allotted to the tenant by the Government was surrendered and lost by him before such application was made under that provision in that it had failed to see that that view had the effect of taking away the protection given by the 1987 Act to a tenant from eviction of the tenanted building and hence result in defeating its object. We find it difficult to accept the argument so advanced on behalf of the tenant. No doubt, the 1987 Act seeks to protect the tenant from eviction from the tenanted lands or buildings by their landlord, in that Section 14(i) of the 1987 Act itself forbids eviction of a tenant in possession of a building or rented land even in execution of a decree passed or otherwise. But, it cannot be overlooked that that section itself declares that a tenant could be evicted from the tenanted building or land if such eviction is permitted under any other provisions of the 1987 Act and removes the cloak of protection given to certain tenants. Section 14(3)(a)(iv) being one of such other provisions in the 1987 Act with which we are now concerned. it could be excerpted :

"14(1).....

(2)

(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession :-

(a) in the case of a residential building, if—

(i)

(ii)

(iii)

(iv) the tenant has, whether before or after the commencement of this Act, built or acquired vacant possession of or been allotted, a residence reasonably sufficient for his requirements;"

As it is the said provision in the 1987 Act which is invoked by the respondent-landlord to get possession of the residential building from the

- A appellant-tenant, we could examine its scope and ambit inasmuch as such examination could also facilitate a proper appreciation of the arguments advanced thereon. the landlord's right to obtain possession of a residential building in the occupation of a tenant under the said provision accrues, as becomes clear from the plain words employed therein, when the tenant
- B either before the commencement of the Act, that is, 17.11.1971 or after the commencement of the Act, that is, 17.11.1971, has built or acquired vacant possession of or been allotted a residence, reasonably sufficient for his requirements. If that is so, can it be said that it is open to a tenant who builds, acquires vacant possession of or is allotted a residence, reasonably
- C sufficient for his requirements, either before or after the commencement of the Act, and thereby entitles the landlord to make an application under the provision to get possession of residential building from such tenant to defeat such entitlement of the landlord, by parting with the residence got by him either before or after the landlord makes such application. Clear and unequivocal words employed in the said provision give no scope for a
- D tenant to say that the accrued entitlement or right of the landlord to get back possession of the residential building from him under the provision is lost when he (tenant) parts with possession of residence which had come to him in one or the other ways referred to therein. To hold that the provision enables the tenant to make his landlord lose his right to recover possession of the residential building accrued thereunder by the tenant
- E parting with possession of residence got by him either before or after the application is made by the landlord under the provision would amount to saying that the tenant, by having recourse to certain means, could defeat the accrued right of the landlord to get possession of the residential
- F building. But, we cannot say so since that could result in encouraging unscrupulous tenants to practice deceit against landlords by adoption of some trick or strategy which could defeat their valuable accrued rights. As the landlord's right to obtain possession of tenanted premises from the tenant when it is unauthorisedly sublet cannot be defeated by a tenant
- G cancelling the sub-lease before or after an application for eviction is made by the landlord on that ground, so also a landlord's right to obtain possession of the residential building when the tenant gets a separate residence as indicated in the provision, cannot be permitted to be defeated by the
- H tenant parting with possession of such residence before or after an application is made by the landlord under that provision. What we have said being

under the scope and ambit of provision in section 14(3)(a)(iv) we are impelled to take the view that a tenant of a residential building who being allotted a residence reasonably sufficient for his requirements becomes liable for eviction from the residential building on an application made by his landlord under section 14(3)(a)(iv) of the 1987 Act, cannot resist the grant of such application on the ground that he lost the allotted residence by surrender made either before or after the filing of such application. As the view on which the High Court has made the order dismissing the revision petition filed before it by the appellant conforms to our view, taken in the matter, the same does not call for our interference in this appeal.

In the result this appeal fails and is dismissed, however with no costs. As there was no objection for granting time to the appellant till the end of the year 1994 for putting the respondent in possession of the residential building, we grant time accordingly, subject to the appellant filing in this Court within one month from today an affidavit containing the usual undertaking.

T.N.A.

Appeal dismissed.