

PETITIONER:
EAST INDIA CORPORATION LTD.

Vs.

RESPONDENT:
SHREE MEENAKSHI MILLS LTD.

DATE OF JUDGMENT 16/04/1991

BENCH:
THOMMEN, T.K. (J)
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THOMMEN, T.K. (J)
SAHAI, R.M. (J)

CITATION:
1991 AIR 1094 1991 SCR (2) 310
1991 SCC (3) 230 JT 1991 (2) 397
1991 SCALE (1) 761

ACT:

Rent Control & Eviction: Tamil Nadu Buildings (Lease and Rent Control) Act, 1960-S. 10, 14 to 16-Eviction of tenant-Jurisdiction of civil court-Scope of.

Constitution of India: Article 14- Declaration of constitutional invalidity of statutory provision-Effect of.

Mysore House Rent and Accommodation Control Order, 1948: Ss. 9, 16 Tamil Nadu Building (Lease and Rent Control) Act, 1960: S. 30(ii).

Code of Civil Procedure, 1908: S. 9- Jurisdiction of Civil Court under s. 10 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960-Extent of.

Words & Phrases: Coram non judice.

HEADNOTE:

The respondent filed a suit against the appellant for recovery of possession of a building on the ground of wilful default in payment of rent which was Rs. 900 per month. The appellant denied the relationship of landlord and tenant, claiming himself as one of the "associates" or "co-sharers" or "co-owners" of the building. The Munsif decreed the suit; and the decree was affirmed in appeal by the first appellate court as also by the High Court. Hence the present appeal.

During the pendency of the present appeal, cl. (ii) of s. 30 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, which exempted from application of the Act premises the monthly rent in respect of which exceeded Rs. 400, and on the basis of which the suit giving rise to the present appeal emanated, was struck down in a judgment by this Court.**

The appellant contended that as a result of the declaration by this Court of the constitutional invalidity of clause (ii) of s. 30, of the Act,

311
which excluded from the purview of the Act any building or part thereof let out on a monthly rent of Rs. 400, the decree of the civil court became null and void and of no effect. On behalf of the respondent it was submitted that the decree passed by the civil court was not a nullity for the Act did ;not bar the jurisdiction of the civil court but

only prohibited execution of a decree of eviction otherwise than in accordance with the relevant statutory provision; and that such a decree was not void, but was merely under an eclipse, and would become executable as and when the bar is removed..

Allowing the appeal, this Court,

HELD; 1.1 Section 10 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 prohibits jurisdiction of the civil court in respect of eviction of a tenant whether in execution of a decree or otherwise except in accordance with the provisions of that section and ss. 14 to 16. The sole circumstance and the condition precedent to the exercise of jurisdiction by a civil court as stated in second proviso to s. 10(1) is that the tenant should have denied the title of the landlord or claimed right of permanent tenancy and the Controller, on such denial or claim by the tenant, reaches a decision and duly records a finding that such denial or claim was bona fide and only when these conditions are satisfied jurisdiction of the civil court can be invoked to pass a decree for eviction on any of the grounds mentioned in s. 10 or ss. 14 to 16. Except to this limited extent the jurisdiction of the civil court is completely barred and the same is vested in the tribunals set up under the Act. Any suit instituted by a landlord for eviction of a tenant from a building falling within the ambit of the Act, otherwise than as stipulated by the section is, therefor, incompetent for lack of jurisdiction of the court and any decree of the court in such a suit is null and void and of no effect. [317D-E, G-H; 318-D,G-H]

Sushil Kumar Mehta v. Gobind Ram Bohra, [1990] 1 SCC page 193, referred to.

1.2 The decision of the Controller is concerned solely with the bona fides, and not the correctness or validity, of the denial or claim, for these difficult questions of title are by the statute reserved for decision by the appropriate civil court which is the more competent forum in such matters. [318D-E]

Magiti Sasamal v. Pandab Bissoi, [1962] 3 SCR 673, referred to.

1.3 If the decision of the Controller is that tenant's denial or

312

claim is not bona fide, the jurisdiction of the civil court cannot be invoked by the landlord and the Controller will then be the competent authority to order eviction, after affording the parties a reasonable opportunity of being heard, on any one of the grounds specified under the statute, including the ground that the tenant has, without bona fide denied landlord's title or claimed right of permanent tenancy. [318E-F]

1.4 Although the Act contains no express bar of jurisdiction of the civil court, its provisions explicitly show that, subject to the extraordinary powers of the High Court, and this Court, such jurisdiction is statute for eviction of tenants "in execution or otherwise". The provision of the Act are clear and complete in regard to the finality of the orders passed by the special tribunals set up under it, and their competence to administer the same remedy as the civil courts render in civil suits. Such tribunals having been so constituted as to act in conformity with the fundamental principles of judicial procedure, the clear and explicit intendment of the legislature is that all questions relating to the special rights and liabilities created by the statute should be decided by the tribunals constituted under it. [317A-C]

Dhulabhai & Ors. v. The State of Madhya Pradesh & Anr., [1968] 3 SCR 662; Secretary of State v. Mask & Co., [1939-40] IA 222 (PC, Raleigh Investment Co. Ltd. v. Governor General in Council, [1946] 47 IA 50 (PC and Barraclough v. Brown & Ors., [1897] AC 615 (HL), referred to.

In the instant case, the procedure stipulated in the second proviso to s. 10 had not been complied with. At the time of institution of the suite, the building in question did not come within the ambit of the Act, owing to the exclusionary provision contained in cl. (ii) of s. 30, but after leave to appeal was granted, the applicability of the Act was extended to the building by reason of the decision of this Court, declaring the invalidity of cl. (ii) of s. 30 on account of its inconsistency with Article 14 of the Constitution. Whatever be the consequences of that declaration-whether it has rendered the statutory provision null and void and of no effect, or, merely inoperative, unenforceable and dormant to be revitalised on subsequent removal of the constitutional ban-in either event, the civil court acting without the aid of the exclusionary provision in cl. (ii) of s. 30, during the period of invalidity, had become coram non jure and its proceedings resulting in the decree a nullity. [319A-D]

313

Ratan Arya & Ors. v. State of Tamil Nadu & Anr., [1986] 3 SCC 385, referred to.

Kiran Singh & Ors. v. Chaman Paswan & Ors., [1955] 1 SCR 117 relied on.

V.B. Patankar & Ors. v. C.G. Sastry, [1961] 1 SCR 591, held inapplicable.

Behram Khurshed Pesikaka v. State of Bombay, [1955] 1 SCR 613; Saghir Ahmad v. State of U.P. and Ors. [1955] 1 SCR 707; Bhikaji Narain Dhakras & Ors. v. The State of M.P. JUDGMENT:

The State of A.P. & Anr., [1958] SCR 1422, referred to.

&
CIVIL APPELLATE JURISDICTION: civil Appeal No. 4032 of 1984.

From the Judgment and Order dated 13.12.1983 of the Madras High Court in Second Appeal No. 166 and CMP No. 1714 of 1983.

U.R. Lalit and S. Srinivasan for the Appellant.

Dr. Y.S. Chitale, Darshan Singh, Praveen Kumar and Sumit Sen for the Respondent.

The judgment of the Court was delivered by

THOMMEN, J. The appellant, the East India Corporation Limited, is the defendant in O.S. No. 623 of 1980, which is a suit instituted by the respondent, Shree Meenakshi Mills Limited, for recovery of possession of a building on the ground of arrears of rent, etc. The respondent-plaintiff alleged that the appellant-defendant was the tenant of the building in question and that it has not paid the agreed rent of Rs. 900 per month for a long period, despite persistent demands, and has thus been in "wilful default" of payment of the agreed rent. The appellant denied these allegations. It specifically denied any relationship of landlord and tenant between the parties, and contended that its occupation of the building was not as a tenant of the respondent, but as one of its "associates" or "co-sharers" or "co-owners". The suit was decreed. The decree of the learned Munsif was affirmed in appeal by the First Appellate Court as well as by the High Court. All the three courts,

rejecting the appellant's contentions

314

to the contrary, found that it was a tenant of the respondent; it questioned without bona fide the respondent's title as landlord; it was in default of payment of rents, and, if was liable to be evicted from the building. Against these concurrent findings, the present appeal was brought to this Court by means of a special leave petition. Leave was granted by order of this Court dated 24.9.84.

At the time of the institution of the suit, or the grant of leave by this Court, the building in question did not come within the purview of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 ('the Act') for the agreed rent, as alleged by the plaintiff-respondent and as found by all the courts, was Rs. 900 per month, and as such was outside the limit prescribed under section 30(ii) of the Act for a residential building to fall within the statutory ambit. Section 30, as it stood at the relevant time, stated:

"30. Exemption in the case of certain buildings.- Nothing contained in this Act shall apply to-
(i) any building for a period of five years from the date on which the construction is completed and notified to the local authority concerned; or
(ii) any residential building or part thereof occupied by any one tenant if the monthly rent paid by him in respect of that building or part exceeds four hundred rupees."

Clause (ii) of section 30 was, however, struck down by this Court in *Rattan Arya & Ors. v. State of Tamil Nadu & Anr.*, [1986] 3 SCC 385. This Court stated:

".... Section 30(ii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 has to be struck down as violative of Article 14 of the Constitution. A writ will issue declaring Section 30(ii) as unconstitutional".

As a result of this declaration of the constitutional invalidity of section 30(ii), the Act in question, according to the appellant, has to be read as if clause (ii) of section 30 was never brought into force, and consequently all residential buildings, which are older than five years (see clause (i) of section 30) and let out for whatever rent, came within the ambit of the Act. Accordingly, although the suit was properly

315

instituted in the civil court without regard to the special provisions of the Act, it is now contended that as a result of the declaration by this Court of the constitutional invalidity of clause (ii) of section 30, which excluded from the purview of the Act any building or part thereof let out on a monthly rent of Rs. 400 the decree of the civil court, whatever be the merits of the findings on the respective contentions of the parties, has become null and void and of no effect whatever. This contention of the appellant is based on the principle that any decree passed by an incompetent court is a nullity. The appellant's counsel relies on the principle reiterated by this Court in *Sushil Kumar Mehta v. Gobind Ram Bohram* [1990] 1 SCC 193 and the earlier decisions referred to therein on the point. In *Kiran Singh & Ors. v. Chaman Paswan & Ors.*, [1955] 1 SCR 117 at 121, Venkatarama Ayyar, J. pointed out :

".... It is a fundamental principle well established that a decree passed by a court without jurisdiction is nullity, and that its invalidity could be set up whenever and where-ever it is sought to be enforced or relied upon, even at the

stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram no judice, and that its judgment and decree would be nullities."

Dr Y.S. Chitale, appearing for the respondent, however, submits that the decree passed by the civil court in the present case is not a nullity for the Act has not barred the jurisdiction of the civil court, but only prohibits execution of a decree for eviction otherwise than in accordance with the relevant statutory provisions. Such a decree, he says, is not void, but is merely under an eclipse, and will become executable as and when the bar is removed. He refers to section 10 of the Act which reads :

"S. 10.-Eviction of tenants.-(1) A tenant shall not be evicted whether in execution of a decree or otherwise except in accordance with the provisions of this section or sections 14 to 16:

316

.....
Relying on certain observations of this Court in B.V. Patankar & Ors. v. C.G.Sastry, [1961] 1 SCR 591 in the context of the Mysore House Rent and Accommodation Control Order, 1948, Dr. Chitale submits that, like in that case, what is prohibited by section 10 in the present case is execution of the decree and the validity of the decree as such is not affected. We do not agree.

Section 9 of the Mysore House Rent and Accommodation Control Order, 1948 reads :

"S. 9(1) A tenant in possession of a house shall not be evicted therefrom whether in execution of a decree or otherwise except in accordance with the provisions of this clause.

....."
Section 16 of that Order reads:

"S. 16.-Nothing in this order shall prevent a landlord from filing a suit for eviction of a tenant before a competent civil court, provided that no decree for eviction of a tenant, passed by a civil court shall be executed unless a certificate to that effect is obtained from the Controller."

Section 16 of the Mysore Order, 1948, thus specifically allows the institution of a civil suit for eviction of a tenant, although a decree passed by such a court for eviction cannot be executed without a certificate to that effect from the Controller. Jurisdiction of the civil court is thus not only not barred but specifically preserved, except for the restriction imposed on the execution of decrees in matters of eviction. On the other hand, such a provision is significantly absent in the enactment in question, The provisions of the Mysore Order considered by this court in B.V. Patankar & Ors. v. C.S.Sastry, [1961] 1 SCR 591 and those of the Act in question here are not in pari materia. The observations of this Court relied on by Dr. Chitale are not, therefore, helpful in understanding the provisions in question in the instant case.

Section 10 of the Act, as seen above, prohibits

eviction of a tenant whether in execution of a decree or otherwise except in accordance with the provisions of that section or sections 14 to 16. These provisions as well as the other provisions of the Act are a self contained code, regulating the relationship of parties, creating special rights and liabilities, and, providing for determination of such rights

317

and liabilities by tribunals constituted under the statute and whose orders are endowed with finality. The remedies provided by the statute in such matters are adequate and complete. Although the statute contains no express bar of jurisdiction of the civil court, except for eviction of tenants "in execution or otherwise", the provisions of the statute are clear and complete in regard to the finality of the orders passed by the special tribunals set up under it and their competence to administer the same remedy as the civil courts render in civil suits. Such tribunals having been so constituted as to act in conformity with the fundamental principles of judicial procedure, the clear and explicit intendment of the legislature is that all questions relating to the special rights and liabilities created by the statute should be decided by the tribunals constituted under it. Although the jurisdiction of the civil court is not expressly barred the provisions of the statute explicitly show that, subject to the extra-ordinary powers of the High Court and this Court, such jurisdiction is impliedly barred, except to the limited extent specially provided by the statute. See in this connection the principle stated by this Court in *Dhulabhai & Ors. v. The State of Madhya Pradesh & Anr.*, [1968] 3 SCR 662. See also *Secretary of State v. Mask & Co.*, [1939-40] 1A 222 (PC); *Raleigh Investment Co. Ltd. v. Governor General in Council*. [1946-47] IA 50 (PC) and *Barraclough v. Brown & Ors.*, [1987] AC 615 (HL).

Judged by this test, the jurisdiction of the civil court in respect of eviction of tenants is barred except to the extent and subject to the conditions prescribed under Section 10. The second provision to section 10(1) reads:

"Provided further that where the tenant denies the title of the landlord or claims right of permanent tenancy, the Controller shall decide whether the denial or claim is bona fide and if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a civil court and the Court may pass a decree for eviction on any of the grounds mentioned in the said sections, notwithstanding that the Court finds that such denial does not involve forfeiture of the lease or that the claim is unfounded".

What is stated in the second proviso to section 10(1) is the sole circumstance in which the civil court is invested with jurisdiction in matters of evictions. But this jurisdiction cannot be invoked otherwise than as stipulated in the second proviso. This means that the condition

318

precedent to the exercise of jurisdiction by a civil court is that the tenant should have denied the title of the landlord or claimed right of permanent tenancy and the Controller should, on such denial or claim by the tenant, reach a decision whether such denial or claim is bona fide. Upon such decision, the Controller must record a finding to that effect. In that event, the landlord is entitled to sue for eviction of the tenant in a civil court. Where these

conditions are satisfied, the civil court will have jurisdiction to pass a decree for eviction on any of the grounds mentioned, in section 10 or Sections 14 to 16, notwithstanding that the Court has found that the tenant's denial of the landlord's title does not involve forfeiture of the lease, or, his claim of right of permanent tenancy is unfounded. Except to this limited extent, the jurisdiction of the civil court in matters of eviction of a tenant is completely barred and the jurisdiction in such matters is vested in the tribunals set up under the statute.

Significantly, the jurisdiction of the civil court can be invoked only where the controller comes to a decision, and records a finding, that the denial or claim by the tenant, as aforesaid, is bona fide. If the Controller were to come to the opposite conclusion, no question of invoking the jurisdiction of the civil court would arise. But the decision of the controller is concerned solely with the bona fides and not the correctness or validity, of the denial or claim, for these difficult questions of title are by the statute reserved for decision by the appropriate civil court which is the more competent forum in such matters (See the principle discussed in *Magiti Sasamal v. Pandap Bissoi*, [1962] 3 SCR 673. In such an event, the civil court will become competent to pass a decree for eviction on any of the grounds mentioned in section 10 or sections 14 to 16. On the other hand, if the decision of the controller is that the tenant's denial or claim is not bona fide the jurisdiction of the civil court cannot be invoked by the landlord and the Controller will then be the competent authority to order eviction, after affording the parties a reasonable opportunity of being heard, on any one of the grounds specified under the statute, including the ground that the tenant has, without bona fide, denied the landlord's title or claimed right of permanent tenancy. What is significant is that the decision of the Controller, duly recorded by him, as regards the bona fide denial or claim by the tenant is the condition precedent to the invocation of power of the civil court. Any suit instituted by the landlord for eviction of a tenant from a building falling within the ambit of the Act, otherwise than as stipulated by the section, is, therefore, incompetent for lack of jurisdiction of the Court and any decree of the Court in such a suit is null and void and no effect.

319

In the present case, the procedure stipulated in the second proviso to section 10 has not been complied with. At the time of the institution of the suit, the building in question did not come within the ambit of the Act, owing to the exclusionary provision contained in clause (ii) of section 30, but after leave to appeal was granted by this Court, the applicability of the Act was extended to the building by reason of the decision of this Court in *Rattan Arya & Ors. v. State of Tamil Nadu & Anr.*, [1986] 3 SCC 385 declaring the invalidity of clause (ii) of section 30 on account of its inconsistency with Article 14 of the Constitution. Whatever be the consequence of that declaration - whether it has rendered the statutory provision null and void and of no effect. See *Behram Khurshed Pesikaka v. The State of Bombay*, [1955] 1 SCR 613 and *Saghir Ahmed v. The State of U.P. and others*, [1955] 1 SCR 707 or merely inoperative, unenforceable and dormant to be revitalised on subsequent removal of the constitutional ban. See *Bhikaji Marain Dhakras and Others v. The State of Madhya Pradesh and Another*. [1955] 2 SCR 589 and *M.P.V. Sundararamier & Co. v. The State of Andhra Pradesh &*

Another, [1958] SCR 1422 in either event, the Civil Court acting without the aid of the exclusionary provision in clause (ii) of section 30, during the period of invalidity, has become coram no judice and its proceedings resulting in the decree a nullity. See *Kiran Singh & Others v. Chaman Paswan & Others*, [1955] 1 SCR 117 at 121.

In the circumstances, we set aside the decrees of the courts below. The appeal is allowed and the appellant is entitled to costs throughout.

R.P.

Appeal allowed.

320

JUDIS