

was required for exchange of the Gram Panchayat land, petitioner can not be summarily evicted as his initial entry into the land in dispute, as mentioned above, was not unauthorised which is sine-qua-non for initiation of proceedings under the provisions of the two Acts, as mentioned above. Further, it would be too iniquitous to evict the petitioner from the land till such time respondent Gram Panchayat surrenders vacant possession of land which has since been taken possession of by it and which admittedly belongs to the petitioner.

6. In view of the discussion made above, the impugned orders, Annexures P-4 and P-6 are set aside. This petition is allowed with costs quantified at Rs. 2,000/-.

Petition allowed

PUNJAB AND HARYANA HIGH COURT

Before Mr. Justice Hemant Gupta

Regular Second Appeal No. 1683 of 1982

Decided on 04.09.2003

Ram Narain and others

Appellants

Versus

Ram Lal and others

Respondents

For the Appellants

Mr. S.C.Kapoor, Advocate with Mr. Ashish Kapoor, Advocate

For the Respondents

Mr. M.L.Sarin, Senior Advocate with Ms. Harsh Rekha, Advocate

Haryana Urban (Control of Rent and Eviction) Act, 1973, Section 1(3), 13 -- Transfer of Property Act, Section 106 -- Ejectment -- Subsequent events -- Change in law -- Plaintiff-Appellant filed suit for possession after serving a notice under Section 106 of Transfer of Property Act for termination of tenancy -- Suit was decreed by trial Court -- But when appeal was pending, Haryana Rent Act became applicable as Town Kharkhoda was declared a notified Area in 1986 -- Held that ejectment decree though passed before enforcement of Rent Act was not executable due to subsequent events.

Full Bench of this Court in Sawan Ram V/s Gobinda Ram and another, 1980(1) Rent Control Reports 21 has held that the intention of the Legislature while enacting the Rent Act was to exclude both the jurisdiction of the Civil Courts as also the application of general law of landlord and tenant. It has been further held that the earlier civil Court decree would be rendered inexecutable and the tenant should not be evicted thereunder.

Subsequent applicability of the Rent Act on account of declaration of urban area would render the decree of the civil Court inexecutable.

In Beg Raj Singh V/s State of UP and others 2003(1)SCC 726, Supreme Court has held that a petitioner though entitled in law may yet be denied relief in equity because of subsequent or intervening events. One of the circumstances on which relief can be denied is that the relief to which the petitioner is held entitled can be rendered incapable of being granted by

change of law.

In terms of the provisions of Section 13 of the Rent Act, the decree passed by the Civil Court cannot be executed. Since the decree cannot be executed, the Courts shall not pass the futile decree as held by the Full Bench in Sawan Ram's case.

(Paras 13,14,17,18)

Cases referred:

1. Atma Ram Mittal V/s Ishwar Singh Punia 1988 HRR 627(SC) = 1989(1) P.L.R. 143(SC).
2. Sawan Ram V/s Gobinda Ram and Another, 1980(1) Rent Control Reports 21 = 1980 PLR 271(F.B).
3. Om Parkash Gupta V/s Ranbir B. Goyal, AIR 2002 (SC) 665 = 2002(1) PLR 799(SC).
4. Beg Raj Singh V/s State of Uttar Pradesh and Others, 2003(1) SCC726.

JUDGMENT

Mr. Justice Hemant Gupta.-- The plaintiffs-appellant filed suit for possession after terminating the tenancy of the defendants in terms of the provisions of Section 106 of the Transfer of Property Act. The said suit was decreed by the learned trial Court but in appeal the judgment and decree of the trial Court was reversed on the ground that the area where the shop in dispute is situated is now within the Municipal limits of Kharkhoda and the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 apply to the shop in dispute and, thus, the civil Court has no jurisdiction to try the suit. It is the said judgment and decree which is subject matter of challenge in the present appeal.

2. The defendants were inducted as tenants of the shop described in the plaint at a monthly rent of Rs.60/-. The plaintiffs terminated the tenancy of the defendants when they failed to pay the rent for different periods.

3. The defendant denied the averments of the plaintiffs but admitted the tenancy and the rate of rent. The defendants denied that the tenancy has been terminated and also alleged that the suit is not maintainable in the present form.

4. The learned trial Court after relying upon the statement of PW 1 Ram Narain found that notice dated 26.7.1976 Exhibit P-3 was served upon the defendants vide acknowledgement receipt Exhibit P-5 and, thus, passed a decree of possession in favour of the plaintiffs.

5. However, during the pendency of appeal filed by the defendants before the first appellate Court, the defendants were allowed to amend the written statement to take up the additional plea that the shop in dispute is situated in the Municipal limits of Kharkhoda and the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 apply to the shop in dispute and, thus, the Civil Court has no jurisdiction to try the suit.

6. The plaintiffs admitted in the replication that a Notified Area Committee has been created in Kharkhoda but pleaded that the civil Court has the jurisdiction to entertain the suit.

7. Though the learned first appellate Court affirmed the finding of the trial Court regarding receipt of notice by the defendants vide acknowledgment Exhibit P-5 but found that the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter to be referred as "Rent Act") became applicable w.e.f. 21.4.1980 and the appeal being continuation of the suit, no decree can be passed by the Civil Court.

8. Before this Court, learned counsel for the appellants has argued that the rights of the parties to the litigation crystallised on the date when the suit for possession was filed. Since on that date the Rent Act was not applicable, the tenants are liable to be evicted. Reliance was placed on the decision of the Supreme Court in the case of *Atma Ram Mittal Versus Ishwar Singh Punia*, 1989(1) Punjab Law Reporter 143(SC).

9. Learned counsel for the respondents controverting the arguments of the learned counsel for the appellants has argued that after the provisions of the Rent Act are made applicable in respect of the area in which the tenanted premises are situated, the tenants cannot be evicted except on the one or the other grounds mentioned in the Rent Act. Therefore, no decree for eviction can be passed on account of termination of tenancy under section 106 of the Transfer of Property Act. Reliance was placed upon the Full Bench judgment of this Court in the case of *Sawan Ram Versus Gobinda Ram and Another*, 1980(1) Rent Control Reporter, 21.

10. I have heard the learned counsel for the parties and with their assistance have gone through the records of the case and found no merit in the present appeal.

11. The fact which could not be disputed is that the Rent Act became applicable to Kharkhoda, where the disputed premises are situated, on 21.4.1980 when the Notified Area Committee in respect of the revenue area of Kharkhoda was constituted. The suit at that time was at the stage of appeal before the learned first appellate Court. The suit was instituted in September, 1976. Therefore, the question which arises is whether the analogy of exemption from the provisions of the Rent Act in terms of Section 1(3) of the Rent Act can be extended in respect of the premises where the Rent Act became applicable after the institution of the suit.

12. In *Atma Ram Mittal's* case (supra), the Rent Act was applicable to the area in which the premises in dispute were situated. By virtue of the provisions of Section 1(3) of the Rent Act itself, the provisions of the Rent Act were not applicable to the tenanted premises for a period of 10 years from the date of construction. In those facts, the Supreme Court has held that where a suit for eviction has been filed within the exemption period, decree for the eviction can be passed even after the expiry of the exemption period and the rights of the parties crystallise on the date when the suit is filed.

13. On the other hand, a Full Bench of this Court in *Sawan Ram's* case (supra) has held that the intention of the Legislature while enacting the Rent Act was to exclude both the jurisdiction of the Civil Courts as also the application of general law of landlord and tenant. It has been further held that the earlier civil Court decree would be rendered inexecutable and the tenant should not be evicted thereunder. The second aspect which was considered by the Full Bench was the applicability of the Rent Act not to the whole of the

geographical jurisdiction of the State uniformly but to the specified urban areas to which the Act would be applicable. The Full Bench in paragraph No.11 of its judgment has held as under: -

“....The second aspect which had been taken in mind and was plainly in the ken of the legislation was the fact that this applied only to the specified urban areas coming within its ambit and not uniformly to the whole of the geographical jurisdiction of the State. Now what is an urban area to which the Act would be applicable may fluctuate and the Rent Restriction Act may designedly be extended to areas which were earlier out of its reach and where consequently civil suits for ejectment and inevitably decrees both possible. Therefore, to visualise one situation, the statute had to provide that such like though granted after the promulgation of the Act would again be rendered infructuous by the extension of the Act to a new area. Taking an example nearer home, if we may assume that a small township like Morinda which may earlier have not been an urban area, was later brought within the ambit of the Act, then the decrees of eviction granted under the general law by the Civil Courts would be rendered inexecutable by Section 13(1) and the object of granting protection to the tenants fulfilled. Therefore, Section 13(1) of the Punjab Act had to take into account all the eventualities out of which some have been visualized above. Consequently, the language of the provision designed to meet these situations appears to us as no warrant for the proposition that the legislature had itself curiously contemplated either suits for ejectment in civil Courts or decrees to be granted therein, even in areas and fields covered exclusively by the rent legislation.”

14. In view of the above, it is apparent that the subsequent applicability of the Rent Act on account of declaration of urban area would render the decree of the civil Court inexecutable.

15. Learned counsel for the respondents has also relied upon the decisions of the Supreme Court in the cases of Om Parkash Gupta Versus Ranbir B. Goyal, A.I.R. 2002 Supreme Court 665 and Beg Raj Singh Versus State of U.P. and Others, (2003)1 Supreme Court Cases 726 and submitted that though ordinary rule of civil law is that the rights of the parties stand crystallised on the date of institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, it is submitted that the Court is required to take into consideration the subsequent events. The subsequent enactment of law is one such event when relief cannot be granted. The subsequent event which was taken into consideration was one of law i.e. constitution of Notified Area Committee by way of notification and, thus, the appellate Court was right in law in taking into consideration the said subsequent event.

16. In Om Parkash Gupta's case (supra), Supreme Court has held as under: -

“11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take a note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief as claimed originally

has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties: (iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In *Pasupuleti Venkateswarlu Versus The Motor and General Traders*, A.I.R. 1975 SC 1409, this Court held that a fact arising after the lis, coming to the notice of the Court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the Court cannot be blinked at. The Court may in such cases bend the rules of procedure if no specific provisions of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The Court speaking through Krishna Iyer, J. affirmed the proposition that Court can, so long as the litigation pends, take note of undated facts to promote substantial justice. However, the Court cautioned; (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautions, and (iv) the rules of fairness to both sides should be scrupulously obeyed.

Such subsequent event may be one purely of law or founded on facts. In the former case, the Court may take judicial notice of the event and before acting thereon put the parties on notice of how the change in law is going to affect the rights and obligations of the parties and modify or mould the course of litigation or the relief so as to bring it in conformity with the law. In the latter case, the party relying on the subsequent event, which consists of fact not beyond pale of controversy either as to their existence or in their impact, is expected to have resort to amendment of pleadings under Order 6 Rule 17 of the CPC. Such subsequent event the Court may permit being introduced into the pleadings by way of amendment as it would be necessary to do so for the purpose of determining real questions in controversy between the parties....”

17. Similarly in *Beg Raj Singh's* case (supra), Supreme Court has held that a petitioner though entitled in law may yet be denied relief in equity because of subsequent or intervening events. One of the circumstances on which relief can be denied is that the relief to which the petitioner is held entitled can be rendered incapable of being granted by change of law. The Supreme Court held as under: -

“The ordinary rule of litigation is that the rights of the parties stand crystallised on the date of commencement of litigation and the right to relief should be decided by reference to the date on which the petitioner entered the portals of the court. A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered

incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against inequities on the date of judgment. Third-party interests may have been created or allowing relief to the claimant may result in unjust enrichment on account of events happening in between. Else the relief may not be denied solely on account of time lost in prosecuting proceedings in judicial or quasi-judicial forum and for no fault of the petitioner..."

18. In view of the above, I am of the opinion that the learned first appellate Court was right in law in taking into consideration the subsequent event of constitution of Notified Area Committee in respect of Kharkhoda i.e. the area where the shop in dispute is situated. In terms of the provisions of Section 13 of the Rent Act, the decree passed by the Civil Court cannot be executed. Since the decree cannot be executed, the Courts shall not pass the futile decree as held by the Full Bench in Sawan Ram's case (supra).

19. Consequently, no substantial question of law arises for consideration by this Court. No merit. The appeal is accordingly dismissed.

Appeal dismissed

PUNJAB AND HARYANA HIGH COURT

Before Mr. Justice Viney Mittal

Regular Second Appeal No. 3407 of 2001

Decided on 14.07.2003

East India Cotton Mfg. Company Limited

Petitioner

Versus

Haryana Urban Development Authority,
Faridabad and others

Respondents

For the Petitioner Mr. P.K. Muteneja, Advocate

For the Respondents Mr. Arshvinder Singh, Advocate

Haryana Urban Development Authority Act, 1977 (13 of 1977), Section 15, 50(2) -- Civil Procedure Code, 1908, Section 9 -- Civil Court -- Jurisdiction -- Jurisdiction of Civil Court is clearly barred by provision of Section 50(2) of the Haryana Urban Development Authority Act - Any concession given by opposite party in this regard cannot confer any jurisdiction on civil court as civil jurisdiction is specifically barred by the Statute.

At the outset, it may be relevant to notice that under the provisions of Section 50(2) of the Act, the jurisdiction of the civil Court was barred. Although, a specific objection was taken by defendants No. 1 and 2 in their written statement but the learned trial court decided the aforesaid issue in favour of the plaintiff by holding that the defendants did not press the same at the time of arguments. The aforesaid observations made by the learned trial court are erroneous on the face of it. If there was a specific bar created by a statute to the jurisdiction of the Civil Court, then the same was liable to be decided by the