CIVIL WRIT

Before Bishan Narain and Grover, JJ.

S. KULDIP SINGH AND ANOTHER,—*Petitioners*

versus

THE TEHSILDAR, AMRITSAR, AND THE COLLECTOR, AMRITSAR,—*Respondents.*

Civil Writ No. 389 of 1956

1958

March, 25th

Indian Income-tax Act (XI of 1922)—Section 46(2)—Recovery of arrears of tax due from legal entities and Hindu Undivided Family as arrears of land revenue—Whether individual coparcener liable to arrest and detention—Punjab

Land Revenue Act (XVII of 1887)—Sections 67 and 69—Applicability of to Hindu Undivided Family.

Held, that if a defaulter is a legal entity and not a natural person then the amount due under the Income-tax Act cannot be recovered as arrears of land revenue by arrest, detention or confinement in jail.

When the defaulter is a Hindu undivided family the dues can be realised only by a mode other than the one prescribed in section 67(b) read with section 69 of the Punjab Land Revenue Act. Section 69 applies only to natural persons and not to artificial persons. Some of the members of the Hindu undivided family cannot be picked out and chosen for arrest and detention as a defaulter under section 69, as the entire family is one entity and cannot be split up for the purposes of arrest and detention.

Case referred by Hon'ble Mr. Justice Bishan Narain on 11th April, 1957 to a larger Bench for decision of the legal point involved in it and later on decided by Hon'ble Mr. Justice Bishan Narain and Hon'ble Mr. Justice Grover on 25th March, 1958.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of mandamus be issued directing respondent No. 1 not to execute the warrants of arrest issued by respondent No. 2.

BHAGIRATH DAS, for Petitioner.

S.M.SIKRI, ADVOCATE-GENERAL, for Respondents.

JUDGMENT.

BISHAN NARAIN, J.—Lachhman Singh and his sons constituted a joint Hindu family and carried on business under the name and style of Saran Singh-Lachhman Singh. Lachhman Singh died on the 7th of May, 1944, but the family business continued. The joint Hindu family firm was assessed to income-tax for the assessment year 1947-48. Afterwards proceedings were taken under section 34 of the Indian Income-tax Act in 1955, and by Bishan Narain, J.

S. Kuldip Singh and another
v.
The Tehsildar Amritsar and The Collector Amritsar

Bishan Narain, J.

order dated the 28th of March, 1956, the family firm was held liable to pay tax amounting to Rs. 1,11,555-7-0. As the tax was not paid the Income-tax Officer sent a recovery certificate under section 46(2) of the Income-tax Act for recovery of the amount from the joint family firm which in all these proceedings has been described as Saran Singh Lachhman Singh. This amount is to be recovered as arrears of land revenue. The Collector issued warrants of arrest of Kuldip Singh and Gulzar Singh, adult members of the family, under section 69 of the Punjab Land Revenue Act. They filed objections to the warrants of arrest on the ground that they were not liable to arrest and detention as the tax was not their individual liability but was the liability of the joint Hindu family. These objections were, however, rejected by the Collector on the 24th of August, 1956. Kuldip Singh and Gulzar Singh have filed this petition challenging the validity of the order of arrest. In view of the importance of the question, the case was referred to a Division Bench and it has now come before us for decision.

The question that requires determination in this case is whether the amount mentioned in a certificate sent under section 46(2) of the Indian Income-tax Act for recovery of the amount due from the joint Hindu family as arrears of land revenue could be recovered from the individual coparcener by arrest and detention.

Now under section 2, sub-clause (9) of the Income-tax Act, a person includes a Hindu undivided family. Accordingly a Hindu undivided family is an entity for assessment. The petitioners with other members constitute a Hindu undivided family under the Indian Income-tax Act and were assessed as such. The petitioners allege that there

S. Kuldip Singh and another
v.
The Tehsildar Amritsar and The Collector Amritsar

Bishan Narain, J.

has been a partition in the family and that the family business has been converted into a partnership since 1950 and that that partnership has been registered under section 26 of the Income-tax Act. These allegations assuming them to be correct have no effect on the present case. Admittedly the tax now due has been assessed on the Hindu undivided family under section 34 of the Income-tax Act for the assessment year 1947-48, and the joint and several liability of each member of the family has not been determined in accordance with the provisions of section 25A, sub-clause (2) of the Act. The recovery certificate sent to the Collector under section 46(2) states that the amount is due from Saran Singh Lachhman Singh of Amritsar and does not say that it is realisable from the petitioners individually.

Admittedly the amount for which an assessing entity becomes liable to pay under the Income-tax Act is a debt due to the Government. Section 46 prescribes various modes by which this amount may be recovered and to achieve this object it is open to the authorities concerned to adopt any of these modes or to adopt more than one such mode concurrently. In the present case the Income-tax Officer had adopted the mode provided in section 46(2) by forwarding the recovery certificate to the Collector Amritsar. Proviso to section 46(2) confers on the Collector powers which a civil Court has for executing a money decree. We are, however, not concerned with this proviso as in the present case the Collector has not purported to invoke this power. Different States in this country have laid down different modes for recovery of arrears of land revenue. Section 67 of the Punjab Land Revenue Act lays down the modes applicable to the Punjab and in the present case the revenue authorities are seeking the amount of Rs 1,11,555-7-0 as

S. Kuldip Singh and another v. The Tehsildar Amritsar and The Collector Amritsar

Bishan Narain, J.

arrears of land revenue by arrest and detention of the petitioners under section 67(b) of the Punjab Act. Section 69 of the Punjab Act reads :—

"69(1) At any time after an arrear of land-revenue has accrued a Revenue-officer may issue a warrant directing an officer named therein to arrest the defaulter and bring him before the Revenue-officer.

(2) When the defaulter is brought before the Revenue Officer, the Revenue Officer may cause him to be taken before the Collector, or may keep him under personal restraint for a period not exceeding ten days and then, if the arrear is still unpaid, cause him to be taken before the Collector.

(3) When the defaulter is brought before the Collector, the Collector may issue an order to the officer-in-charge of the civil jail of the district, directing him to confine the defaulter in the jail for such period, not exceeding one month from the date of the order, as the Collector thinks fit.

(4) The process of arrest and detention shall not be executed against a defaulter who is a female, a minor, a lunatic or idiot."

The contention raised on behalf of the petitioners is that this provision in the nature of things applies only to individual persons and not to a body like a joint Hindu family. It is argued that in the present case the defaulter is a joint Hindu family and the mode of recovery laid down in section 67(b) and section 69 is not applicable to a joint Hindu family. The respondent's reply is that a joint Hindu family consists of its members and

S. Kuldip Singh and another
v.
The Tehsildar Amritsar and The Collector Amritsar

Bishan Narain, J.

all the members jointly and severally are personally liable to pay the dues under the Income-tax Act, and, therefore, section 67(b) and section 69 are applicable. Now a warrant of arrest can be issued only to a defaulter. This expression is defined in section 3(8) of the Punjab Act as a person liable for an arrear of land revenue including a surety responsible for its payment. The word "person" is not defined in the Punjab Land Revenue Act. The Punjab General Clauses Act however defines the expression as including any company or association or body of individuals whether incorporated or not (*vide* section 2, sub-clause (40) of the Punjab General Clauses Act) but this definition is subject to "anything repugnant in the subject or context. Whether the word "person" in a statute can be considered to apply to a natural person or can be held to include a body or association of individuals must depend on the consideration of the object and purpose of the statutory provision.. *In The Pharmaceutical Society* v. *The London and Provincial Supply Association Limited* (1), Lord Blackburn observed :—

> "The word "person" may very well include both a natural person, a human being, and an artificial person, a corporation. I think that in an Act of Parliament, unless there be something to the contrary, ...it ought to be held to include both.....in which way it is used in any particular Act, must depend upon the context and the subject-matter. I do not think that the presumption that it does include an artificial person, a corporation, is at all a strong one. Circumstances, and indeed circumstances of a slight nature in the

(1) (1880) 5 A.C. 857

S. Kuldip Singh and another v. The Tehsildar Amritsar and The Collector Amritsar

Bishan Narain, J.

context, might show in which way the word is to be construed in an Act of Parliament, whether it is to have the one meaning or the other. I am quite clear about this, that, whenever you can see that the object of the Act requires that the word 'person' shall have the more extended or the less extended sense, then, whichever sense it requires, you should apply the word in that sense, and construe the Act accordingly."

It appears to me that the scheme of section 69 shows that it is meant to apply only to natural persons and not to artificial persons. I am unable to understand how a Hindu undivided family can be arrested and brought before the Revenue Officer as laid down in section 69(1) of the Punjab Act. A Hindu undivided family as a body cannot be confined in the jail. Lord Blackburn in another portion of the above judgment remarked that a corportion cannot be imprisoned. Moreover, under section 69(4) of the Punjab Act, a minor or a female, a lunatic or idiot, cannot be arrested and detained. Therefore, if a Hindu undivided family consists of minors also, then the family as a whole cannot be arrested and detained or confined in jail. Obviously some of the members of the Hindu undivided family cannot be picked out and chosen for arrest and detention as a defaulter under section 69, as the entire family is one entity and cannot be split up for the purposes of arrest and detention.

It, therefore, follows that if the defaulter is a legal entity and not a natural person then the amount of dues under the Income-tax Act cannot be recovered as arrears of land revenue by arrest,

S. Kuldip Singh and another v. The Tehsildar, Amritsar, and The Collector, Amritsar

Bishan Narain, J.

detention or confinement in jail. When the defaulter is a Hindu undivided family the dues can be realised only by a mode other than the one prescribed in section 67(b) read with section 69 of the Punjab Land Revenue Act. It is of course open to the Collector to proceed to recover this amount by other modes prescribed in section 67 of the Act.

For these reasons, I accept this petition and quash the warrants of arrest issued against the petitioners. I further direct the Tehsildar not to execute the warrants of arrest issued by the Collector against the petitioners. The petitioners are entitled to their costs of this petition.

GROVER, J.—I agree.

Grover, J.

R. S.

CRIMINAL REFERENCE.

Before Gosain and Grover, JJ.

MEENA RAM ALIAS BASTI RAM,—*Petitioner*

versus

Mst. DWARKI,—*Respondent*.

(Criminal Reference No. 142-P of 1955)

1958

March, 31st

Pepsu Panchayat Raj Act (VIII of 2008 Bk.)—Section 67—Whether manatory—Offence triable by Panchayat Adalat—Whether can be tried by a magistrate.

Held, that the language employed in section 67(1) of of Pepsu Panchayat Raj Act 2008 Bk., is mandatory in its terms and its provisions are obligatory.

Held further, that the entire machinery which has been provided by the Pepsu Panchayat Raj Act is quite different, not only with regard to the procedure but even with regard to the punishment, from the procedure contained in the Code of Criminal Procedure and from the punishment provided for by the Indian Penal Code in the sense that the Adalat is not competent to inflict a sentence of imprisonment. Subsection (1) of section 67 makes it obligatory on the Magistrate before whom a complaint or report by

the police of any offence triable by any Adalat is lodged to transfer the proceedings to the Adalat concerned. It is true that there is a certain amount of difference between the pharseology used in subsection (1) and subsection (2) of section 67. Subsection (2) completely debars the magistrate from taking cognizance of any offence which is triable by an Adalat upon his own knowledge or suspicion whereas such cognizance is not barred by the provisions of sub-section (1). But when the legislature has constituted a new class of Courts and has prescribed a special procedure and conferred jurisdiction on those Courts, it is difficult to see how any concurrent jurisdiction could have been left in the Court of the Magistrate when the same is being conferred on a different Court, namely, the Adalat.

Case referred by Shri Murari Lal Puri, Sessions Judge, Patiala, Camp. Kandaghat, with his order dated the 21st April, 1955, under Section 438 Criminal Procedure Code for revision of the order of S. Gurnam Singh, Magistrate Ist Class, Kandaghat dated the 29th November, 1954, convicting the petitioner. It was heard by G. L. Chopra, J., who referred it to a larger Bench for decision of the legal points involved in the case.

R. K. DASS BHANDARI, for Petitioner.

N. L. SALUJA, for Respondent.

JUDGMENT

Grover, J. GROVER, J.—Mina Ram, petitioner, was convicted by Magistrate, Ist Class, Kandaghat, under section 323, Indian Penal Code, and sentenced to pay a fine of Rs. 50 or in default to undergo one month's rigorous imprisonment. His petition for revision was referred by the learned Sessions Judge with the recommendation that the conviction be set aside as illegal because of non-compliance with the mandatory provisions of section 67 of the Pepsu Panchayat Raj Act, 2008 Bk. As an Adalat was in existence and was competent to try the aforesaid case, the question agitated was whether the jurisdiction of the Magistrate was ousted.

This petition came up before Chopra, J., and by an order dated 9th June, 1955 it has been referred to a larger Bench.

In order to decide the question which has been referred it is necessary to examine the scheme of the Pepsu Panchayat Raj Act, 2008 Bk. (hereinafter called the Act). According to section 54 of the Act, the Government or the prescribed authority may divide any district into circles, each circle comprising one or more Sabha areas, and establish a Panchayati Adalat for each circle. It is next provided by section 55 that the Panchayati Adalats may be classified as Class I and Class II Adalat for the purpose of discharging judicial functions. Section 65 gives jurisdiction to the Adalat to try the offences mentioned in the Schedules as well as in the section itself. It is common ground that an offence under section 323 Indian Penal Code, would be within the jurisdiction of the Adalat. Section 67 provides as follows :

> "67. (1) Any magistrate before whom a complaint or report by the police of any offence triable by any Adalat is lodged shall transfer the proceedings to the Adalat concerned.
>
> (2) No magistrate shall upon his own knowledge or suspicion take cognizance of any offence which is triable by an Adalat after such Adalat has been constituted."

Section 70 provides how a complaint is to be filed before the Adalat. The complaint can be made orally or in writing and the complainant has to pay fee of Re. 1. If the complaint is made orally, the person authorised to receive the complaint under subsection (1) of section 70 shall

Meena Ram alias Basti Ram v. Mst. Dwarki

Grover, J.

record such particulars as may be prescribed. Section 71 gives the procedure which the Adalat has to follow after the institution of a complaint. Section 73 enjoins that the Adalat shall dispose of the cases promptly. If possible, the case has to be tried and decision given on the date on which the accused appears before it. Section 74 is important inasmuch as the powers of the Adalat are restricted in the matter of punishment. Adalat Class I may, on conviction, sentence the accused to a fine not exceeding rupees two hundred or double the value of the damage or loss caused by the act of the accused, whichever is greater. Adalat Class II can sentence the accused to a fine not exceeding rupees one hundred etc. The Adalat is also empowered to release the accused instead of punishing him after due admonition, or require him to execute, within such time as the Adalat may fix, a bond with or without sureties, of an amount not exceeding rupees two hundred, binding himself that he will not commit any offence for a period not exceeding twelve months; or where the accused is under eighteen years of age, the Adalat can require his father or his guardian to execute within such a time as it may fix, a bond with or without sureties, of an amount not exceeding rupees two hundred, binding himself to prevent such offender from committing any offence for a period not exceeding twelve months. There are other provisions in section 74 which need not be noticed. According to section 75, if a fine is imposed the Adalat may order the whole or any portion of the fine recovered to be applied:—

(a) in defraying expenses properly incurred in the case by the complainant;

(b) for compensating any material damage or loss caused by the offence committed.

If the Adalat is satisfied that the case is false and frivolous or vexatious, it may, for reasons to be recorded, direct compensation of such amount not exceeding rupees one hundred to be paid by complainant or informant to the accused. Section 76 says that no conviction shall be deemed to be a previous conviction for the purposes of section 75 of the Penal Code or section 562 or 565 of the Code of Criminal Procedure; nor shall it disqualify any person from exercising any electoral right or from being elected or appointed to or holding any office. The appellate forum is constituted by section 77 of the Act; any person aggrieved by a final order made by an Adalat, can appeal to a Magistrate of the Ist Class. The order of the Magistrate or officer on appeal has been given finality by subsection (5) of section 77. It is thus clear that the entire machinery which has been provided by the Act is quite different, not only with regard to the procedure but even with regard to the punishment, from the procedure contained in the Code of Criminal Procedure and from the punishment provided for by the Indian Penal Code in the sense that the Adalat is not competent to inflict a sentence of imprisonment. It is in the light of the scheme of the Act that the provisions of section 67 have to be examined. Subsection (1) of section 67 makes it obligatory on the Magistrate before whom a complaint or report by the police of any offence triable by any Adalat is lodged to transfer the proceedings to the Adalat concerned. It is true that there is a certain amount of difference between the phraseology used in subsection (1) and subsection (2) of section 67. Subsection (2) completely debars the magistrate from taking cognizance of any offence which is triable by an Adalat upon his own knowledge or suspicion, whereas such cognizance is not barred by the provisions of

Meena Ram alias Basti Ram *v.* Mst. Dwarki

Grover, J.

subsection (1). But when the legislature has constituted a new class of Courts and has prescribed a special procedure and conferred jurisdiction on those Courts, it is difficult to see how any concurrent jurisdiction could have been left in the Court of the Magistrate when the same is being conferred on a different Court, namely, the Adalat. It is also true, as has been stated by Maxwell in the book on the Interpretation of Statutes, that there is a general presumption against an intention to disturb the established state of the law, or to interfere with the vested rights of the subject, and that a strong leaning now exists against construing a statute so as to oust or restrict the jurisdiction of a superior Court, although this feeling may owe its origin to the pecuniary interests of the Judges in former times, when their emoluments depended mainly on fees. But at the same time it is added that the supposition is that the legislature would not make any important innovation without a very explicit expression of its intention. If the intention is explicit and clear, then no question of applying this presumption will arise. It is further noteworthy that the language employed in section 67(1) of the Act is mandatory in its terms and employs the word 'shall'. It has been laid down by their Lordships of the Supreme Court that the use of the word 'shall' is not conclusive and an enactment in form mandatory may be merely directory [*vide Hari Vishunu* v. *Ahmad Ishaque* (1)], but it is the duty of the Court to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed as has been enjoined in *H. N. Rishbud* v. *State of Delhi*, (2). The entire scheme of the Act which has been already examined shows that the provisions of section 67(1) are obligatory. If any

(1) A.I.R. 1955 S.C. 233
(2) A.I.R. 1955 S.C. 196

analogy can be drawn, it would be useful to refer to the provisions of section 191 of the Code of Criminal Procedure. While interpreting the phraseology employed in that section it has been held that non-compliance with its provisions is not a mere irregularity curable under section 537 but is an illegality and renders the proceedings null and void [*vide Mohammad Sadiq* v. *Emepror* (1), and other cases given in note 5 in Chitaley's Commentaries on the Code of Criminal Procedure, Volume I]. It would be pointless to refer to certain decisions which have been cited before us, namely, *Harbans Singh* v. *Sita Devi*, (2), and *Subba Rao* v. *Narsiah*, (3), as they related to different statutes the language of which was not in pari-materia with the statute which is being considered in the present case.

For all these reasons, it must be held that the Magistrate had no jurisdiction to try the case and was bound to transfer the same to an Adalat of competent jurisdiction.

The recommendation of the learned Sessions Judge is accepted and the conviction of the petitioner is set aside.

R. S.

CIVIL MISCELLANEUS

Before A. N. Bhandari, C. J. and Chopra, J.

RAM PARSHAD HALWAI,—*Petitioner.*

versus

MUKHTIAR CHAND,—*Respondent.*

Civil Miscellaneous No. 791 of 1957 with Civil Revisions Nos. 67 76, 77, 101, 243, and 644 of 1957

1958

April, 8th

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13 (3) (a)—Amendment of, by East Punjab Urban Rent Restriction (Amendment) Act (XXIX of 1956)—Whether retrospective in its effect—Amendment Act XXIX of

(1) A.I.R. 1938 Lah. 19
(2) A.I.R. 1958 Pat. 113
(3) A.I.R. 1940 Mad. 495

1956—Whether relates to substantive law or merely to procedural matters—Rights of landlord to recover possession of his property from the tenant—Whether a substantive right—Act III of 1949—Section 13—"Evict" and "in accordance with the provisions of this section"—Meaning of—"Vested right"—Meaning and nature of—Punjab General Clauses Act (I of 1898)—Section 4—Repeal and simultaneous fresh legislation on the same subject—Effect of—Interpretation of Statutes—Statute—Whether retrospective—Rules to determine, stated—Amended Act—Constitution of, subsequent to amendment—Rule as to, stated—Act III of 1949—Section 13(1)—"This section"—Construction of, after amendment by Act XXIX of 1956.

Construction

Held, that it cannot be said that there is no escape from the conclusion that the use of the words "except in accordance with the provisions of this section" in sub-section (1) of section 13 of the East Punjab Urban Rent Restriction Act (III of 1949) was intended to give retrospective operation to all and every subsequent amendment of the provisions of the section. Act XXIX of 1956 also does not contain anything in express terms to give it a retrospective effect or to make it applicable to pending actions nor is there anything in the Amending Act itself from which the intention to give retrospective operation to the amendment may be implied. In that view of the matter, the amendment of clause (a) of sub-section (3) of section 13 of the Act of 1949 by the Amendment Act 29 of 1956 shall have no application to the proceedings for an order of eviction instituted under section 13(3)(a) of the Act of 1949 prior to the coming into force of Act 29 of 1956, whether they be pending decision in the original or appellate court or court of revision or superintendence, nor to the proceedings seeking execution of an order of eviction made under section 13(3)(a) of the Act of 1949 prior to its amendment in 1956.

Held, that the Amendment Act, XXIX of 1956, relates to substantive law and not merely to procedural matters. It further curtails the already truncated right of the landlord to evict his tenant. The right of landlord to recover possession of his property from the tenant is certainly a substantive right.

Held that "Evict" literally means "to dispossess by law or expel by legal process". Eviction consists in physical act of throwing out the tenant from the building which

he is occupying. One of the methods of such eviction is by the process of execution of a decree for possession. Sub-section (1) of section 13 makes it clear that this method stands prohibited and that the only permissible method will be to obtain an order of eviction from the Controller as provided by the section. The order passed by the Controller can be executed and actual eviction obtained as provided by section 17 of the Act. The phrase "in accordance with the provisions of this section" only means "in the method or mode provided by the section," that is, by means of obtaining an order for eviction from the Controller. What the sub-section provides is that the eviction shall not take place except "in accordance with the provisions of this section." This may legitimately be construed to mean that the eviction shall take place only in the manner provided by the section. In other words, it is not the order of eviction that is required to be "in accordance with the provisions" of the section, but the eviction is required to take place as provided by the section.

Held, that "Vested right" is the power to do certain actions or possess certain things lawfully, and is substantially a property right, which may be created by common law, by statute, or by contract. There is a vested right in an accrued cause of action or in a defence to a cause of action. Right of a landlord to apply for and obtain an order of eviction of his tenant is certainly a right in property and a vested right.

Held, that when the repeal is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry in such cases would be, not whether the new Act expressly keeps alive old rights and liabilities, but whether it manifests an intention to destroy them.

Held, that it is correct that the intention to give retrospective operation to a statute so as to make it applicable to pending actions need not be stated in express terms, necessary implication also is a recognized mode of expression. The freedom of Legislature to express its mind in any form cannot be restricted. But where any such intention is suggested, the Courts always insist on there being

a clear, adequate and unequivocal expression of the intention, which should not be easy to mistake. The matter is one of construction and if upon a construction of the enactment it is absolutely apparent that it was the intention of the Legislature that provisions of the Act should apply to pending cases, they have to be so applied.

Held, that it is true that social legislations, like the Rent Restriction Acts, are generally intended to be retrospective in operation. But that would always depend upon the indication of such intention, expressly or by necessary intendment, in a particular statute. The mere fact that the object of a legislation is to eradicate some evil or to introduce a social reform cannot be regarded as a clear or sufficient indication of the intention to make the statute retrospective. You have to look to the provisions of the statute itself and judge the intention from the language used.

Held, that whenever an amended Act has to be applied subsequent to the date of the amendment the various unamended provisions of the Act have to be read along with the amended provision as though they are part of it. This is for the purpose of determining what the meaning of any particular provision of the Act as amended is, whether it is in the unamended part or in the amended part. But this is not the same thing as saying that the amendment itself must be taken to have been in existence as from the date of the earlier Act. That would be imputing to the amendment retrospective operation which could only be done if such retrospective operation is given by the amending Act either expressly or by necessary implication.

Held, that "this section" in section 13(1) of Act III of 1949, subsequent to the date of amendment by Act XXIX of 1956, is to be read as the section as amended.

Petition under Article 227 of the Constitution of India praying that the order dated 4th July, 1956 passed against the petitioner by the Appellate Authority, Ludhiana be quashed and the order dated 23rd January, 1956, passed by Shri Ishar Singh, Rent Controller, Ludhiana, dismissing the application of the respondent be restored and further praying that during the pendency of the petition in this Court, operation of the order of ejectment passed against the petitioner by the appellate Authority, Ludhiana, be stayed ad interim.

In Civil Misc. No. 791 of 1956

SHRI H. L. SARIN, for the Petitioner.

SHRI N. N. GOSWAMI, for the Respondent.

In Civil Revision No. 67 of 1957

SHRI K. C. NAYAR, for the Petitioner.

SHRI S. L. PURI, for the Respondent.

In Civil Revisions Nos. 76 and 77 of 1957

SHRI SURINDER SINGH, for the Petitioner.

SHRI S. L. PURI, for the Respondent.

In Civil Revision No. 101 of 1957

SHRI SHAMAIR CHAND, for the Petitioner.

SHRI H. L. SARIN, for the Respondent.

In Civil Revision No. 243 of 1957

SHRI SOM DATT BAHRI, for the Petitioner.

MESSRS D. N. AGGARWAL AND R. N. AGGARWAL, for the Respondent.

In Civil Revision No. 644 of 1957

SHRI INDAR SINGH KARWAL, for the Petitioner.

SHRI DAULAT RAM MANCHANDA, for the Respondent.

(Note:—The marginally noted petitions as stated in the Judgment have been given above).

ORDER

CHOPRA, J.—The identical question of law involved in the marginally noted petitions is whether retrospective effect is to be given to the East Punjab Urban Rent Restriction (Amendment) Chopra, J.

Ram Parshad Halwai v. Mukhtiar Chand

Chopra, J.

Act, 1956, so as to make it applicable to the pending actions. The amending Act came into force on 24th September, 1956, and its section 2 in addition to certain other changes in the other sub-clauses substituted the following in place of sub-clause (iii) of section 13(3) (a) of the East Punjab Urban Rent Restriction Act No. III of 1949 (hereinafter to be referred as the Act) :—

> "In the case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or local authority or any Improvement Trust under some improvement or development scheme or if it has become unsafe or unfit for the human habitation".

The sub-clause (iii) of section 13(3) (a) prior to the amendment reads :—

> "In the case of any building, if he requires it for the re-erection of that building, or for its replacement by another building, or for the erection of other buildings."

The effect of the amendment is that while previously a landlord, if he required the building for re-erection or replacement, could apply to the Controller for an order directing the tenant to put the landlord in possession of the building, after the amendment the landlord can apply to the Controller for possession of the building only if he requires it to carry out any building work at the instance of the Government or local authority.

There can be no doubt that the amendment shall apply to an application for possession presented by a landlord after the commencement of

Act 29 of 1956. The question, however, is whether the amendment also applies to pending proceedings, which may fall under any of the following categories :—

(1) An application presented by the landlord under section 13 of the Act prior to 24th September, 1956, and pending disposal before the Controller.

(2) An appeal, revision or writ petition questioning the validity of an order passed by the Controller under section 13 of the Act before its amendment, pending decision by the appellate or revisional Court or Court exercising power of superintendence.

(3) An execution proceeding pending in the Court of first instance or before an appellate Court relating to the execution of an order for ejectment made under the Act prior to its amendment in 1956.

Section 4 of the Punjab General Clauses Act, which has direct bearing on the point in question, says :—

"Where this Act or any Punjab Act repeals any enactment then, *unless a different intention appears*, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect ; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or

Ram Parshad Halwai
v.
Mukhtiar Chand

Chopra, J.

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed ; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Repealing Act had not been passed."

Whenever there is repeal of an enactment the consequences laid down in this section will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry in such cases would be, not whether the new Act expressly keeps alive old rights and liabilities, but whether it manifests an intention to destroy them. Section 4 of the Punjab General Clauses Act will, therefore, apply to this case of repeal and a simultaneous enactment unless a contrary intention can be gathered from the

new enactment, *State of Punjab* v. *Mohar Singh Partap Singh* (1).

On behalf of the landlords, it is contended that as provided by section 4 of the General Clauses Act and according to the rule laid down by their Lordships of the Supreme Court, the new legislation does not take away the rights and privileges acquired by the landlord and the obligations incurred by the tenant under the earlier enactment and, therefore, the pending proceedings ought to be decided according to the law obtaining at the time the actions were commenced. According to the landlords, they had acquired the right to evict their tenants if they required the building for its re-erection or for its replacement by another building at the time the application for eviction was submitted to the Controller and this right had not been expressly or by necessary implication taken away by the new legislation. It is stressed that a statute, unless it be a statute dealing with procedural matters only, should be presumed to be prospective and construed as having no retrospective operation.

On the other hand, the tenants' case is that a pending litigation is always to be decided according to the law existing at the time of its final decision, and an appeal being in the nature of rehearing of the case the appellate Court also is competent to take into account legislative changes since the decision under appeal was given and its powers are not confined only to see whether the lower Court's decision was correct according to the law as it stood at the time when its decision was given. *Lachmeshwar Prasad Shukul and others* v. *Keshwar Lal Choudhri and others* (2). When a subsequent Act amends an earlier one in

(1) A.I.R. 1955 S.C. 84
(2) A.I.R. 1941 F.C. 5

Ram Parshad Halwai v. Mukhtiar Chand

Chopra, J.

such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all, *Shamrao V. Parulekar and others* v. *District Magistrate, Thana Bombay and others* (1). It is, therefore, submitted that after the amendment in 1956 the words "this section" in subsection (1) of section 13 of the Act shall be construed to mean the section as amended. Section 13(1) of the Act says :—

> "A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section.

The argument is that after the amendment a tenant in possession of a building shall not be evicted therefrom unless the conditions laid down by the section, as amended, are satisfied and that the requirements of the law shall apply to every pending proceeding so long as the tenant has not been actually evicted.

Undoubtedly, Act 29 of 1956 relates to substantive law and not merely to procedural matters. It further curtails the already truncated right of the landlord to evict his tenant. The right of a landlord to recover possession of his property from the tenant is certainly a substantive right. The

(1) A.I.R. 1952 S.C. 324

rule of interpretation for the application of an amendment of a substantive law to the pending actions has recently been considered in detail and determined in two Full Bench decisions of this Court, of which I was a member. In *Colonel His Highness Raja Sir Harindar Singh Brar Bans Bahadur* v. *The State of Punjab* (1), the question referred to the Full Bench was whether compensation in respect of property acquired under the provisions of East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1948, should be paid as provided by the said Act or under the Punjab Requisitioning and Acquisition of Immovable Property Act, 1953, which repealed the earlier Act and provided a different mode for determining the amount of compensation. It was held that when law is altered during the pendency of an action the rights of the parties are decided according to the law as it existed when the action was taken, unless the new statute shows a clear intention to vary such rights. The Court is not to see whether there is an express provision permitting the continuance of pending proceedings but whether there is any clear indication against the continuance of pending proceedings to their normal termination. The argument in favour of the application of the repealing enactment to the acquisitions made under the old Act was repelled by my Lord the Chief Justice saying :—

> "The argument appears to ignore the fact that although the Constitution of India does not prohibit the passage of *ex post facto* laws which have the effect of disturbing or destroying vested rights, it is a fundamental rule of English Law that no statute shall be construed to have a retrospective operation unless

(1) 1957 P.L.R. 386

Ram Parshad Halwai
v.
Mukhtiar Chand

Chopra, J.

such a construction appears very clearly in the terms of the Act or is distinctly expressed and clearly and necessarily implied by the language used by the Legislature. This is particularly so when a statute impairs vested rights or the legality of past transactions or the obligation of contract. Such rights cannot be taken away by implication. 'In order to take away the right' observed Lord Watson in *Western Counties Railway* v. *Windsor* (1), it is not sufficient to show that the thing sanctioned by the Act, if done, will of sheer physical necessity put an end to the right, it must also be shown that the Legislature have authorised the thing to be done at all events and irrespective of its possible interference with existing rights."

In the second case *Pt. Ram Parkash* v. *Shrimati Savitri Devi* (2), the question was whether the Hindu Marriage Act, 1955, was intended to operate retrospectively so as to deprive the husbands of the rights acquired by them before its enactment. It was observed that every statute which takes away or impairs a vested right acquired under the existing law or creates a new obligation, imposes a new duty or attaches a new disability in respect of transactions or considerations already past, must be deemed to be prospective. The statute would operate retrospectively only when the intent that it should so operate clearly appears from a consideration of the terms thereof, which unequivocally give the statute a retrospective operation or imperatively require such a construction or negative the idea that it is to apply only to future cases. Emphasizing the general rule of interpretation

(1) (1882) 7 A.C. 178, 179
(2) 1957 P.L.R. 549

Hon'ble the Chief Justice again observes that a statute should not be given retrospective operation unless its words are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intention of the Legislature could not be otherwise satisfied, particularly where retrospective operation would alter the pre-existing situation of parties or affect or interfere with their antecedent rights.

If two interpretations are possible, it is the duty of Court to accept the one which is more reasonable, more consistent with ordinary practice and less likely to produce impracticable or absurd results. Vested rights should not be presumed to be affected and rights of parties to an action should ordinarily be determined according to the law as it stood at the date of commencement of the action, *United Provinces* v. *Mst. Atiqa Begum and others* (1). It is correct that the intention to give retrospective operation to a statute so as to make it applicable to pending actions need not be stated in express terms, necessary implication also is a recognised mode of expression. The freedom of Legislature to express its minds in any form cannot be restricted. But where any such intention is suggested, the Courts always insist on there being a clear, adequate and unequivocal expression of the intention, which should not be easy to mistake. The matter is one of construction and if upon a construction of the enactment it is absolutely apparent that it was the intention of the Legislature that provisions of the Act should apply to pending cases, they have to be so applied.

It is also true that social legislations, as the present one is, are generally intended to be retrospective in operation. But that would always depend upon the indication of such intention, expressly or by necessary intendment, in a particular

(1) A.I.R. 1941 F.C. 16

Ram Parshad Halwai v. Mukhtiar Chand

Chopra, J.

statute. The mere fact that the object of a legislation is to eradicate some evil or to introduce a social reform cannot be regarded as a clear or sufficient indication of the intention to make the statute retrospective. You have to look to the provisions of the statute itself and judge the intention from the language used.

It is in the light of these well-recognised rules of interpretation that we have now to look to the provisions of the statute in question. Act 29 of 1956 does not contain anything in express terms to give it a retrospective effect or to make it applicable to pending actions. It is also common ground between the parties that there is nothing in the amending Act itself from which the intention to give retrospective operation to the amendment may be implied. As already noticed, the contention is that retrospective effect to the amendment is given by subsection (1) of section 13, for the phrase "this section" in this subsection is to be read as the amended section after the amendment, the result being that a tenant, after the coming into force of the amendment, shall not be liable to be evicted except under the circumstances or on the fulfilment of the conditions mentioned in the amended section. The question would thus rest on the interpretation to be placed upon and the effect to be given to the phrase "except in accordance with the provisions of this section" in the subsection. It may here be useful to examine briefly the historical background.

The first legislation on the subject was passed in the United Punjab in 1941. The Punjab Urban Rent Restriction Act, 1941, merely imposed limitations on the powers of the landlord to claim rent in excess of the "standard rent" or to eject the tenant so long as the tenant was willing and ready to pay the rent admissible under the Act. Jurisdiction of civil Courts to determine these questions

was not excluded and decrees passed by civil Courts continued to be executable as before. Before the expiration of the extended life of this Act, the Punjab Urban Rent Restriction Act, VI of 1947, was promulgated. This Act, for the first time, constituted a special tribunal for determining disputes between landlords and tenants and introduced a radical change in the administration of the Rent Control Law. Section 13(1) of the Punjab Urban Rent Restriction Act, 1947, laid down :—

> "A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section."

Subsections (2) and (3) of section 13 enumerated the circumstances under which a landlord could apply to the Controller for an order directing the tenant to put the landlord in possession of the leased premises. The Controller, if satisfied that any of those circumstances existed, was to make an order directing the tenant to deliver possession of the building to the landlord. Section 17 of this Act provided for the execution of the Controller's order by a civil Court having jurisdiction in the area as if it were a decree of that Court. The law did not prohibit the institution of a suit for possession by the landlord or the civil Court to pass a decree for possession against the tenant. Even though a civil Court could pass a decree for possession, the decree was not capable of being executed by the Court. A decree obtained prior to the coming into force of this Act was also made, in express terms, unexecutable. Thenceforth, it was the order of a Controller alone that could be executed. This intention of the Legislature was made clear by use of

Ram Parshad Halwai v. Mukhtiar Chand

Chopra, J.

the phrase "except in accordance with the provisions of this section." The intention unmistakably was to withdraw the executability of a decree passed by a civil Court whether before or after the commencement of 1947 Act. The phrase "except in accordance with the provisions of this section" was meant to impress that thenceforth the only forum for the landlord to obtain an executable order of eviction was the special tribunal (Controller) established under that Act.

In 1948 certain amendments were made in the Act of 1947, but subsection (1) was left unamended. Act of 1947 was repealed and its place was taken by the East Punjab Urban Rent Restriction Act, 1949, which came into force on 25th March, 1949. Subsection (1) of section 13 of 1949 Act, as originally enacted, was substantially the same. It stated :—

> "A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section."

The question then arose whether an order of eviction passed by the Controller under section 13 of Act, 1947, was covered by the only exception provided in section 13 (1) of the Act and was executable under section 17 of the Act. In other words, whether the eviction of a tenant in execution of such an order would be "in accordance with the provisions of *this* section". Obviously, "this section" meant section 13 of the repealing Act of 1949. Answer to the question in the negative would have created anomalies and resulted in absurdities.

In *Amar Nath* v. *Nathoo Ram and another* (1), my learned brother Bhandari, J. (as he then was), saved the ridiculous situation by taking recourse to section 22 of the Punjab General Clauses Act and held that an order passed by the Controller in exercise of the powers conferred upon him by Act VI of 1947, must be deemed to be an order passed by him in exercise of the powers conferred upon him by the Act of 1949. It was after this decision that section 13(1) of the Act was amended and another exception "or in pursuance of an order made under section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended" was introduced. This was done by section 2 of the East Punjab Urban Rent Restriction (Amendment) Ordinance No. 6 of 1950, published in *Punjab Gazette* dated 30th May, 1950. The section further provided that the amendment shall be deemed to have been made since the commencement of the Act.

If the interpretation sought to be placed by the tenants be accepted, the result would be that an order of ejectment passed by the Controller under section 13(3) (a) of the Act, before its amendment in 1956, shall not be executable, although an order under the identical provisions of Act, 1947, shall be regarded as valid and capable of being executed. The absurdity is self-evident and such a result would never have been intended.

Subsections (2) and (3) of section 13 of the Act lay down the procedure to be followed where a landlord seeks the eviction of his tenant and state the grounds on which the landlord may apply to the Controller for an order of eviction and the circumstances under which the Controller may pass an order for eviction. The subsections do not deal

(1) A.I.R. 1951 Punj. 329

Ram Parshad Halwai
v.
Mukhtiar Chand

Chopra, J.

with the actual eviction of the tenant. "Evict" literally means "to dispossess by law or expel by legal process". Eviction consists in physical act of throwing out the tenant from the building which he is occupying. One of the methods of such eviction is by the process of execution of a decree for possession. Subsection (1) of section 13 makes it clear that this method stands prohibited and that the only permissible method will be to obtain an order of eviction from the Controller as provided by the section. The order passed by the Controller can be executed and actual eviction obtained as provided by section 17 of the Act. The phrase "in accordance with the provisions of this section", in my opinion, only means "in the method or mode provided by the section," that is, by means of obtaining an order for eviction from the Controller. What the subsection provides is that the eviction shall not take place except "in accordance with the provisions of this section." This may legitimately be construed to mean that the eviction shall take place only in the manner provided by the section. In other words, it is not the order of eviction that is required to be "in accordance with the provisions" of the section, but the eviction is required to take place as provided by the section.

Subsections (2) and (3) of section 13 only say that a landlord may apply to the Controller for an order directing the tenant to put the landlord in possession, if the circumstances mentioned in the subsections exist. For instance, before the amendment of 1956, a landlord could apply to the Controller for an order directing the tenant to put the landlord in possession, in the case of any building, if he required the building for its re-erection. The amendment says that he can so apply only if he requires the building to carry out any building work at the instance of the Government or local authority. It clearly means that the amendment

is to apply only to future applications for ejectment and not to those which have already been presented or in which an order has already been made. In the absence of anything to the contrary, in express terms or by necessary implication, the amendment shall have to be regarded as prospective. Subsection (1) of section 13 is no doubt pronouncedly retrospective in its operation so far as the executability of a decree is concerned, it is expressly made applicable even to decrees passed before the Act came into force. No such intention is expressed in subsections (2) and (3) of the section. That the Legislature had demonstrated an intention to enact retrospectively to a certain extent is not sufficient to warrant a retrospective operation carried beyond the meaning of the terms used strictly construed. (Craies on Interpretation of Statutes, page 360).

It is perfectly true that whenever an amended Act has to be applied subsequent to the date of the amendment the various unamended provisions of the Act have to be read along with the amended provision as though they are part of it. This is for the purpose of determining what the meaning of any particular provision of the Act as amended is, whether it is in the unamended part or in the amended part. The result is that "this section" in section 13(1), subsequent to the date of the amendment, is to be read as the section as amended. But this is not the same thing as saying that the amendment itself must be taken to have been in existence as from the date of the earlier Act. That would be imputing to the amendment retrospective operation which could only be done if such retrospective operation is given by the amending Act either expressly or by necessary implication, *Shri Ram Narain* v. *The Simla Banking and Industrial Co., Limited* (1).

(1) A.I.R. 1956 S.C. 614

Ram Parshad Halwai v. Mukhtiar Chand

Chopra, J.

In applications presented after the amendment, the Controller must necessarily take notice of the amendment in the provisions of the section and of the new circumstances which the landlord is required to establish for obtaining the eviction of his tenant. But as I look at it the mere use of the phrase "except in accordance with the provisions of this section" in subsection (1) of section 13 does not unequivocally and unmistakably express the intention of the legislature to give retrospective operation to all and every subsequent amendments to the rest of the provisions of the section and to take away vested rights of the parties to a litigation already commenced. "Vested right" is the power to do certain actions or possess certain things lawfully, and is substantially a property right, which may be created by common law, by statute, or by contract. There is a vested right in an accrued cause of action or in a defence to a cause of action. Right of a landlord to apply for and obtain an order of eviction of his tenant is certainly a right in property and a vested right.

Where two interpretations may be possible, the Courts have always leaned in favour of interpreting every substantive law to be prospective. Section 18 of the Gaming Act, 8 and 9 Vict. C. 109, was in the following terms :—

> "And be it enacted, that all contracts or agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void ; and that no suit shall be brought *or maintained* in any Court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made."

The question arose whether the peremptory inhibition against the institution or maintenance of any suit in any Court of law or equity for recovering any sum of money on the basis of a wagering contract would apply to suits instituted before and pending at the time of the commencement of the statute. Dealing with the question Parke, J., in *Moon* v. *Durden* (1) observes:—

> "It seems a strong thing to hold, that the Legislature could have meant that a party who, under a contract made prior to the Act, had as perfect a title to recover a sum of money, as he had to any of his personal property, should be totally deprived of it without compensation. It is a still stronger thing to hold, that, if he has already commenced an action with an undoubted right to recover his debt and costs, he should not only forfeit both, but also be liable, as he would in the ordinary course of a suit, to pay the costs of his adversary, by being obliged to discontinue, or be nonprossed, or have his judgment arrested. These considerations afford a strong reason for limiting the operation of the words of this section, and holding that they apply to future contracts, and actions on such future contracts only at all events, to future actions only, if any distinction can be made in the degrees of apparent injustice.
>
> "The enactment, 'that all contracts or agreements, by way of gaming or wagering, shall be null and void,' if it stood by itself ought most clearly to be construed as applicable to future contracts and agreements only, by virtue of the rule

(1) (1848) 2 Exch. 22

Ram Parshad Halwai
v.
Mukhtiar Chand

Chopra, J.

of construction to which I have adverted, and the apparent injustice of putting an end to a vested right. So, if the next part stood alone, it would, I think, though not so clearly, be construed, for the same reason, to apply to future actions only ; and the clause, to avoid the injustice which would otherwise be inflicted on a plaintiff should be construed to mean, not that an action already brought should not be maintained, but that no action should afterwards be brought, or, if brought, maintained ; and the absence of any provisions that the costs of an existing action should be paid by a defendant, in my mind, strongly favours that construction. The union of the two clauses together does not appear to me to make any difference. The latter clause is surplusage, so far as it relates to bringing actions, whether we construe the former to apply to future or existing contracts ; and the only observation that can be made is, that in one mode of construing the enactment the word 'maintained' is inoperative, in the other it is not. It is redundant, unless it applies to the maintenance of an existing action ; but this circumstance of mere redundancy does not appear to me to be sufficient to shew, that the legislature meant to do so unjust a thing as to prevent the maintenance of an existing well-founded action. I think it best to abide by the sound rule of construction above referred to notwithstanding the conjectures as to the real intention of the legislature, which the nature of the subject occasions. I, therefore, hold that, at all

events, this action is maintainable, and am disposed to say that the clause affects none but future wagers ; and, consequently, that the plaintiff is entitled to our judgment."

Even at the risk of declaring the second clause "or maintained" as redundant, three of the four eminent Judges who decided the case did not agree to apply the statute to a pending action.

Section 4 of the Trade Disputes Act, 1906, provided *inter alia* that an action against a Trade Union "shall not be *entertained* by any Court." The Court of Appeal in *Smithies* v. *National Association of Operative Plasterers* (1), took the view that that section was not intended to be retrospective so as to apply to the suits already instituted. This decision was followed in *Beadling and others* v. *Goll* (2), a case under the Gaming Act, 1922. This Act received the Royal assent on 20th July, 1922. Section 1 of the Act provided that no action for the recovery of money under section 2 of the Gaming Act, 1835, "shall be entertained in any Court." The actions in question had been commenced in December, 1921, and decided on the 28th July, 1922. Effect to the new Act was given and the suits dismissed. The dismissal was set aside on appeal and it was held that the provision in section 1 of the Gaming Act, 1922, that no action for the recovery of money under section 2 of the Gaming Act, 1835, shall be entertained in any Court, is not retrospective in regard to actions which had commenced before the passing of the Act and in which judgment had not been given when the Act came into force. As regards the defective

(1) (1903) 1 K.B. 310
(2) 1922, 39 T.L.R. 128

Ram Parshad Halwai
v.
Mukhtiar Chand

Chopra, J.

drafting Lord Justice Scrutton is reported to have observed :—

> "It was a pity that Parliament and those who advised Parliament did not see that the matter was made clear * * * *. It was a great pity that legislation was carried on in this way on a point which any lawyer must have foreseen would arise and on which the wording of the Act was left in deliberate obscurity."

The same can certainly be said in respect of the provisions of the enactment in question.

Henshall v. *Porter* (1). is another case under the Gaming Act, 1922. Here, the plaintiff, after the Act came into force, issued a writ in respect of causes of action which had arisen before that Act came into force. The prohibitory provision that no action "shall be entertained in any Court" was not regarded as sufficient indication of the Act being retrospective, and it was held that plaintiffs' cause of action, vested in him before the Act of 1922 came into force, was not divested on the Act coming into force and that he was entitled to recover. The force of the general rule of interpretation was impressed by Mc Cardie, J., in the following terms :—

> "In my opinion the Act of 1922 must be considered in the light of the settled, recognised and beneficent rule of law that existing rights are not to be deemed to be destroyed by a statute unless there be express words or the plainest implication to that effect. I need not cite the overwhelming body of authority as to this ; many of the decisions and text books are quoted in *Bowling* v. *Camp* (2). I see nothing in the Act of 1922

(1) (1923) 2 K.B. 193
(2) 39 T.L.R. 31

which compels me to give it a retrospective operation. Take the broad facts here. On July 20, 1922, the plaintiff possessed fully accrued rights under the Act of 1835. The defendant then owed him statutory debts : see *Cohen* v. *Hall* (1), These debts constituted property in the fullest sense of the word. Can it justly be said that on July 20, 1922, that property was wholly destroyed by an ambiguously worded Act of Parliament ? In my opinion the answer is No. It should, I venture to think, be remembered that in many cases the statutory debts under the Act of 1835 may have been assigned for value or may have been mortgaged to secure advances."

In *Gillmore* v. *Shooter* (2), the point arose on the Statute of Frauds (29 Car. 2, C. 3), which was passed in 1676. Section 4 of this Act provided that "no action shall be brought" in certain cases without a writing testifying the promise. Before that statute became law a cause of action accrued to the plaintiff, but he had no writing in support. After the statute was passed he commenced his action. It was held that the words "no action shall be brought" did not debar his claim, for "it could not be presumed that the Act had a retrospect to take away an action to which the plaintiff was then entitled."

In *Thistleton* v. *Frewer* (3), during the pendency of an action the Medical Act (21 and 22 Vict. C. 90) was passed and its section 32 enacted

(1) (1922) 2 K.B. 37
(2) (1677) 2 Mod. 310
(3) (1862) L.J. Ex. 230

Ram Parshad Halwai
v.
Mukhtiar Chand

Chopra, J.

that after 1st January, 1861, no person shall be entitled to recover any charge in any Court of law for any medical or surgical advice, attendance, etc., unless he could prove upon the trial that he was registered under that Act. The plaintiff in the aforesaid action was not registered under that Act and his suit although instituted before 1st January, 1861, came up for trial subsequent to that date. It was held that the plaintiff's right to the recovery of the amount claimed by him could not be affected by the Act that came into force after he had instituted the suit. I see no substantial difference between the provisions "no person shall be entitled to recover any charge" and "no landlord shall be entitled to evict a tenant." The rule of interpretation laid down in some of these English decisions has received the express approval of their Lordships of the Federal Court in *United Provinces* v. *Mt. Atiqa Begum and others* (1).

A subsequent amendment in law was not held to take away the right of appeal or revision against the decision in a pending case in *Keshoram Poddar* v. *Nundo Lal Mallick* (2), and *Kartar Singh* v. *Hassanand* (3).

In *C. Moothaliondam Chetty* v. *G. Venkatesari Chetti* (4), and *Thelepurath Madhava Kurup* v. *K. Muhammad Sukri Sahib* (5), the question arose whether section 8(1) and (2) of the amended Rent Control Order (which was almost in similar terms as section 13 of the Act) should be so construed as to have retrospective operation and affect the rights of the parties in a pending litigation. In

(1) A.I.R. 1941 F.C. 16
(2) A.I.R. 1927 P.C. 97
(3) A.I.R. 1948 Sind. 86
(4) A.I.R. 1945 Mad. 386
(5) A.I.R. 1949 Mad. 367

the first of these cases a decree for ejectment of the tenant was obtained prior to the amendment, and in the second the decree was passed after the amendment had come into force but in a suit instituted before the amendment. Objection to the executability of the decree on the score of the amendment was ruled out because the amendment was not held to be retrospective. In the latter case Panchapagesa Sastri, J., followed the earlier decision and observed—

> "If there had been no amendment in the interval, the landlord, who had a right to obtain an executable decree in ejectment when the suit was instituted, could have taken out execution proceedings and obtained delivery of possession from the tenant in due course of execution of the decree which he had obtained in the suit. Such a right could not be a mere matter of procedure which could be taken away by the amended provisions of the new Order unless there is any clear indication that the amended order should apply so as to take away even existing rights of a substantive character, rights which had accrued prior to the coming into force of the new amendment, and indeed, rights for the enforcement of which an action had been instituted in the civil Court. Section 8(1) no doubt is very wide in its terms and operates to prevent a tenant from being evicted, 'whether in execution of a decree or otherwise and whether before or after the termination of the tenancy'. The advocate for the respondent strenuously contends that these words are by themselves sufficient to indicate that the

Ram Parshad Halwai v. Mukhtiar Chand

Chopra, J.

Legislature meant to take away pre-existing rights. He lays particular stress on the words 'whether in execution of a decree or otherwise.' It is however possible to give a meaning to these words without necessarily construing the section as taking away the rights of parties in an action instituted before the amendment came into force."

It is correct that section 13(1) of the Act expressly makes its provisions applicable to decrees, whether passed before or after the commencement of the Act. But that is immaterial so far as the *ratio decidendi* of the above decisions is concerned.

Reference may usefully be made to a Full Bench decision of the Lahore High Court in *Peoples Bank of Northern India Ltd.* v. *Wahid Bux* (1), in which the question arose whether retrospective effect was to be given to section 35 of the Punjab Relief of Indebtedness Act No. 12 of 1940, so as to make it applicable to the pending execution applications. The section amended section 60 of the Code of Civil Procedure and exempted from "attachment or sale" one main residential house belonging to a judgment-debtor other than an agriculturist and which was occupied by him. In this case, the Official Liquidator had obtained a payment order and in execution thereof had got a house of the judgment-debtor attached before the coming into force of Act 12 of 1940. After this Act came into force, the judgment-debtor made an application for release of his residential house from attachment. The objection was allowed and the learned Single Judge of the High Court ordered

(1) A.I.R. 1943 Lah. 170

that the house under attachment should be released. The Letters Patent appeal was referred to the Full Bench and it was held—

> "Exempting property from sale is not a mere matter of procedure. It is a matter affecting the rights of the decree-holder and the obligations of the judgment-debtor. Act 12 of 1940 has thus taken away a substantive or vested right in the decree-holder who had attached property before the Act came into force. Since there is no express provision in the Act which makes S. 35 retrospective and since there is nothing in the wording of S. 35 which compels a Court to hold that it was intended to have a retrospective effect, the section is not retrospective and does not apply to execution proceedings pending at the time the Act came into force where attachment had already been effected."

It was contended that the use of the word "or" in the phrase "shall not be liable to attachment or sale" makes it clear that the Legislature had in mind cases where the attachment might have taken place but the sale had not, before the Act came into force. It meant to say that the property would not be sold but the attachment, which was validly made, would have to be subsisted presumably for all times. Refuting the argument Harries, C.J., observes—

> "I am unable to place such a construction upon these words. It appears to me that on the plain meaning of the section, the intention of the Legislature was to exempt all property in future

Ram Parshad Halwai
v.
Mukhtiar Chand

Chopra, J.

from attachment and sale following such attachment. It was never the intention to exempt property already attached from the consequences of such attachment, namely, sale. In my view every word in S. 35 of Act 12 of 1940, can be given full weight without giving that section retrospective effect. To hold that the section applies not to pending proceedings after attachment does no violence whatsoever to the terms of the section, but on the contrary gives full effect to the words used. That being so, I am bound to hold that the section is not retrospective and does not apply to execution proceedings pending at the time the Act came into force where attachment had already been effected."

In *Mohd. Amir Khan* v. *M. Mohd. Khalil and another* (1), during the pendency of a suit for ejectment of the tenant and for recovery of the arrears of rent, the following notification under the Defence of India Rules was issued :—

"No tenant or sub-tenant *shall be evicted* from any such accommodation so long as he pays and is ready and willing to pay rent according to the terms of the tenancy and subject to the limit fixed in the Punjab Urban Rent Restriction Act and otherwise in the opinion of the District Magistrate, Sargodha, conducts himself as a good tenant both as regards personal conduct and reasonable care of the property."

The trial Court as well as the first appellate Court gave effect to the notification and dismissed

(1) A.I.R. 1947 Lah. 180

the suit. On second appeal to the High Court it was held—

> "There was absolutely nothing in the notification to show that it was intended to have a retrospective operation. If the notification were fatal to the continuance of the suit, the plaintiff, on the dismissal of his suit, might be made liable for the defendant's costs and this by itself was a very weighty consideration for holding that the notification was not intended to have a retrospective operation so as to affect pending actions. Hence, as the plaintiff, at the time the suit was instituted, had a complete and indefeasible right to maintain the suit which was properly filed, the notification could not be relied on in bar of the suit."

Dealing directly with the point is a decision of G. D. Khosla, J., in *Hari Ram* v. *Mangoo Ram* (1). In this case, the landlord of the premises in dispute made an application for eviction of his tenant on the ground that he required the building for reconstruction and he was, therefore, entitled to apply for an order directing the tenant to put him in possession under the provisions of section 13(3)(a)(iii) of the East Punjab Urban Rent Restriction Act, 1949. It was found by the Rent Controller and also by the Appellate Authority that the landlord did in fact require the premises for reconstruction and that he *bona fide* intended to rebuild them. The order of eviction was challenged in the High Court in a writ petition under Article 226 of the Constitution on the ground that the amending Act, No. 29 of 1956, which had come

(1) 1957 P.L.R. 94

Ram Parshad Halwai
v.
Mukhtiar Chand

Chopra, J.

into force in the meantime, gave protection to the tenant from ejectment inasmuch as the landlord was not required to carry out the building work at the instance of the Government or any local authority as provided by section 2 of the new Act. The question whether the provisions of section 2 of the Punjab Act 29 of 1956 give any protection to a tenant against whom an order of eviction was applied for and passed before this Act came into force, was answered in the negative and the writ petition dismissed. The learned Judge observes—

> "There is no doubt that the laws relating to tenancy are intended for the protection of tenants. At the same time they do retain certain rights possessed by landlords. One of the rights which the landlord has is to apply for the eviction of his tenant and obtain possession of his premises. This right has been considerably curtailed by the East Punjab Urban Rent Restriction Act. The right has been further curtailed by Punjab Act 29 of 1956 but the amendment clearly relates to substantive law and not to procedural law. It does not deprive the landlord of his right, however, truncated and attenuated that right was, with retrospective effect, and where a landlord has under the old Act of 1949 applied for eviction and obtained an order thereon, he will be entitled to enforce that order despite any subsequent amendment which curtails his right still further."

As regards the retrospective effect of the amending Act, he further observes—

> "The amending Act does not say that the tenant will be entitled to retain possession of the premises in his occupation

unless these premises are unsafe and have to be rebuilt at the instance of the Government or a local authority. What the Act says is that the landlord may in future apply for ejectment on the ground of rebuilding only if certain conditions are satisfied. This amounts not so much to giving protection to the tenant as to curtailment of the landlord's rights. The deprivation of the landlord's right or its curtailment may result in increased protection to the tenant, but the terms in which the amending Act is phrased relate rather to the right of the landlord than to the right of the tenant and therefore it seems to me that the amending Act does not affect the validity of the order passed in this case. The order was good under the old law and must now be given effect to."

The conclusion was arrived at upon a consideration of the amending Act itself without reference to the provisions of section 13(1) of the Act. That aspect of the matter was not placed before the learned Judge and, therefore, was not considered.

Another case of this Court which involved an identical point is *Motia Wanti* v. *Sardha Ram* (1), decided by My Lord the Chief Justice on 20th January, 1957. Here, too, the landlord had applied for securing eviction of his tenant on the ground that she required the building for re-erection and for its replacement by another building. The Rent Controller ordered the eviction of the tenant but the District Judge, on appeal, came to a contrary conclusion and dismissed the application. The landlord went in revision to the High

(1) C.R. No. 92 of 1956

Ram Parshad Halwai
v.
Mukhtiar Chand

Chopra, J.

Court and a prayer for interference under Article 227 of the Constitution was also made. The tenant opposed the petition, taking his stand on the amendment of law in 1956, which had come into force in the meantime. Mr. Shamair Chand, learned counsel for the landlord, did not dispute the retrospective operation of the amendment. On the other hand, the counsel conceded that because of the subsequent change in law the landlord was no longer entitled to secure the eviction of her tenant on the grounds mentioned by her in the original application. He prayed for the case to be remanded to the trial Court for determining whether the house in question had become unsafe or unfit for human habitation, as required by the amended provision. The prayer was refused because no such ground was taken up in the original application for ejectment. It was in these circumstances that the following observation, reliance on which is being placed on behalf of the tenants, was made by My Lord the Chief Justice :—

> "The changes introduced by the new provision are substantial and it is no longer open to a landlord to secure the eviction of his tenant on the ground only that he requires the building for purposes of re-erection of the building or for its replacement by another building. The eviction can be secured if and only if he complies with the provision of law which is now in force. In other words, eviction can be secured if the landlord complies with the provisions of clause (iii) as substituted by Punjab Act 29 of 1956."

Certainly the conclusion was in consonance with the law as it existed on the date of the decision,

the retro-activity of which was not disputed. The decision cannot, therefore, be regarded as authority on the point in question, which was neither considered nor decided.

Another decision relied upon by learned counsel for the tenants is also of no help to them. In that case, *Korah Punnen and another* v. *Parameswara Kurup Vasudeva and others* (1), a compromise decree for possession of the leased premises passed against a tenant by a civil Court was sought to be executed after the coming into force of the Rent Control Order, 1950. The Order required that before a tenant is sought to be evicted on the ground of denial of title of the landlord there should be a decision of the Rent Controller that the denial was not *bona fide*, before the civil Court can pass a decree for eviction on that ground, or there should be an order by the Rent Controller for eviction of the tenant on that ground. On behalf of the landlord it was argued that after the date of the compromise decree the defendants were only in the position of licensees and not tenants and that, therefore, they were not entitled to the benefit under the Buildings (Lease and Rent Control) Order. The argument was repelled and it was held—

> "Whatever may be the nature of the decree, eviction of a tenant in execution of the decree is prohibited under clause 9(1) of the Order except in certain specified cases. Since the provision contained in the clause is mandatory, and consent and compromise decrees are not exempted from the ambit of the clause, the Court is debarred from evicting tenants in execution of compromise

(1) A.I.R. 1956 Trav. Co. 1

Ram Parshad Halwai
v.
Mukhtiar Chand

Chopra, J.

or consent decrees also except in accordance with the provisions of the clause. It is a case of the Court having no jurisdiction to execute the decree for eviction by reason of the statutory prohibition and, therefore, there is no scope for the application of the doctrine of waiver."

Obviously, this was a case of execution of a decree for possession passed by a civil Court, which was expressly prohibited by the Rent Control Order.

Certain observations of Basheer Ahmed Sayeed, J., in *B. A. Woodman* v. *Mrs. Regina Rajan* (1), appear to support the tenants' case, but as the judgment would show they were based upon the specific provisions of the amending Act No. 8 of 1951. In this case, the landlady had obtained an order for eviction from the Rent Controller on 7th September, 1950. She took out execution of this order in the City Civil Court as provided by the Act under which the order was made. Before actual eviction could take place the amending Act came into force on 1st May, 1951. The tenant then put in a petition for cancellation of the warrant for possession on the ground that no order of eviction should be passed against him by virtue of the amended provisions. The prayer was refused and the tenant went in revision to the High Court. Section 12(b) of the Act of 1951, gave the High Court and the District Judge power to revise, on the application of any aggrieved party, any order passed or proceeding taken by the authority, either the Rent Controller or the executing authority. An Explanation was appended to this section which extended the jurisdiction of the High Court and the District Judge also to orders passed

(1) A.I.R. 1953 Mad. 378

on proceedings taken at any time within six months before the commencement of the amending Act of 1951. Section 21 of the Act of 1951 stated *inter alia* that any rule or order made or any action or proceeding taken under the old Act shall be deemed to be a rule or order made or action or proceeding taken under the corresponding provisions of the amending Act. The effect of these provisions read with section 24 of the old Act was that any application made, appeal preferred or other proceeding instituted under the old Act and pending at the commencement of the Act of 1951 was to be disposed of as if the Act of 1951 had been in force at the time when such application, appeal or proceeding was made, preferred or instituted. It was in view of these provisions that the learned Judge revised and set aside the eviction order dated 7th September, 1950, passed by the Rent Controller and quashed the proceedings pending before the City Civil Judge.

For all these reasons, it cannot be said that there is no escape from the conclusion that the use of the words "except in acordance with the provisions of this section" in subsection (1) of section 13 of the Act was intended to give retrospective operation to all and every subsequent amendment of the provisions of the section. In that view of the matter, the amendment of clause (a) of subsection (3) of section 13 of the Act by Act 29 of 1956 shall have no application to the proceedings for an order of eviction instituted under section 13(3) (a) of the Act prior to the coming into force of Act 29 of 1956, whether they be pending decision in the original or appellate Court or Court of revision or superintendence, nor to the proceedings seeking execution of an order of eviction made under section 13(3) (a) of the Act prior to its amendment in 1956.

(Then His Lordship passed orders in individual cases, the report of which is not material.)

Bhandari, C. J.

BHANDARI, C.J.—I agree.