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MOHINDER LAL

v.

SMT SAROJ KUMARI VERMA

JANUARY 13, 2009

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[S.B. MAJMUDAR AND D.P. MOHAPATRA, JJ.]

Rent Control and Eviction :

East Punjab Urban Rent Restriction Act, 1949 :

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Eviction suit—Civil Court—Jurisdiction to entertain—Exemption—From the purview of Rent Control Act—Notifications dated 31.1.1973 and 24.9.1973 exempted new building from the purview of the Act for a period of five years—Mode of computation—Held : Where sewerage connection can be given to a building the period of exemption is to be counted from the date

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when such connection is granted by the competent authority; where sewerage connection cannot be granted, as for instance, in the case of booths the period is to be counted from the date electric connection is first given by the competent authority and in a case not covered under these two categories, from the date the building is actually occupied—If the building is one to which

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sewerage connection can be granted, and in fact granted on 24.2.1973, the period of 5 years' exemption has to be computed from that date—However, Notification dated 31.1.1973 applies only to those buildings which are given sewerage connection or electric connection or which are occupied as the case may be on or after 31.1.1973 and not to those buildings which satisfy any of the said conditions before 31.1.1973—Since electric connection was given to

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the building, of which the suit premises was part, on a date prior to 31.1.1973 the said exemption notification is not applicable to the suit premises—Therefore, the Act will apply and civil court has no jurisdiction to entertain the eviction suit—The Act is a beneficial piece of legislation intended to grant protection to the tenants—Therefore, exemption notification, which takes out

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cases from the purview of the Act, should be strictly construed—Hence, the decision in Punjab Tin Supply Co.'s case does not require reconsideration.

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The respondent-landlady filed a suit before the civil court for eviction of the appellant-tenant from the suit premises on account of arrears of rent/damages. It was the case of the respondent that the building of which the suit premises was a part, was exempted from the provisions of

the East Punjab Urban Rent Restriction Act, 1949 for a period of 5 years from the date of the sewerage connection which was given to the building on 24.2.1973; that the period of exemption had not expired on the date of filing of the suit and, therefore, the civil court has jurisdiction to entertain the suit. On the other hand it was the case of the appellant that since the electric connection to the building was given on 3.1.1973 the period of exemption from the purview of the Act was to be computed from this date and the suit, having been filed after 5 years from that date, was not maintainable. The trial court dismissed the suit. However, the first appellate court set aside the judgment of the trial court, which was confirmed by the High Court. Hence this appeal.

On behalf of the appellant it was contended that the Notification dated 31.1.1973 exempting buildings from the purview of the Act did not apply to the suit premises since electric connection was given to it prior to 31.1.1973 as held in *Punjab Tin Supply Co.'s* case.

On behalf of the respondent it was contended that the Notification dated 24.9.1973 issued in partial modification of the Notification dated 31.1.1973 was applicable to the suit premises and that *Punjab Tin Supply Co.'s* case required reconsideration.

Allowing the appeal, this Court

HELD : 1.1. On a fair reading of the notifications particularly the one issued on 24.9.1973 it is clear that where sewerage connection can be given to a building the period of exemption is to be counted from the date when such connection is granted by the competent authority; where sewerage connection cannot be granted, as for instance, in the case of booths the period is to be counted from the date electric connection is first given by the competent authority and in a case not covered under these two categories, from the date the building is actually occupied. 251-G-H; 252-B]

1.2. Since the building, of which the suit premises is a part, is not one to which sewerage connection cannot be granted and to which sewerage connection was indeed granted on 24.2.1973 the period of 5 years' exemption should be computed from that date. [252-A-B]

2. However, in view of the law laid down by this Court in *Punjab Tin Supply Co.'s* case the exemption granted by the notification dated 31.1.1973

- A** applies only to those buildings which are given sewerage connection or electric connection or which are occupied as the case may be on or after 31.1.1973 and not to those buildings which satisfy any of the said conditions before 31.1.1973. Since electric connection was granted to the building on the date prior to 31.1.1973 the said exemption notification is not applicable to the suit premises which is a part of the building. Therefore, the East Punjab Urban Rent Restriction Act, 1949 will apply and the civil court has no jurisdiction to entertain the eviction suit. [252-C-D; G]

Punjab Tin Supply Co. v. Central Government, [1984] 1 SCC 206, affirmed.

- C** 3. The East Punjab Urban Rent Restriction Act, 1949 is a piece of beneficial legislation intended to grant protection to the tenants against arbitrary and unauthorised eviction by the landlords. Therefore, the exemption notification, which takes out cases from the purview of the Act, should be strictly construed. Hence, the decision in *Punjab Tin Supply Co.'s* case does not require reconsideration. [253-B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 203 of 2000.

- E** From the Judgment and Order dated 22.10.97 of the Punjab & Haryana High Court in S.A.O. No. 30 of 1997.

M.K. Dua for the Appellant.

- F** Balram Gupta and Nidhesh Gupta and Ms. Minakshi Vij for the Respondent.

The Judgment of the Court was delivered by

D.P. MOHAPATRA, J. Leave granted.

- G** The core question that arises for determination in this case is whether the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act') was applicable to the building in question on the date of filing of the suit? If the question is answered in the affirmative the suit is not maintainable; if on the other hand the answer to the question is
- H** in the negative then the suit is maintainable.

Suit property relates to the shop-cum-office No. 84, Sector 17-C, Chandigarh. Undisputedly, the respondent herein is the land-lady and the appellant is the tenant in respect of the suit premises. The respondent filed civil suit No. 57 of 1982 for ejectment of the appellant from the suit property and for recovery of Rs. 4,500 on account of the arrear and rent/damages. The respondent inducted the appellant as a tenant of the suit premises on monthly rent of Rs. 1,500 on 5th May, 1973. The respondent terminated the lease and filed the suit for ejectment on 13.1.1978. It is the case of the respondent that the building is exempted from the provisions of the Act, as applicable to Chandigarh for a period of 5 years from the date of the sewerage connection which was given to the building on 24-2-1973.

The period of exemption had not expired on the date of filing of the suit; therefore, the civil court has jurisdiction to entertain the suit.

Contesting the suit the appellant contended, *inter alia*, that electric connection to the building was given on 3.1.1973; the period of exemption from the purview of the Act is to be computed from this date and the suit having been filed after 5 years from that date is not maintainable.

On the pleadings of the parties the trial court framed the following issues which are relevant for the present purpose :

- A. Whether the suit is not competent in view of the applicability of the East Punjab Urban Rent Restriction Act, 1949 as applicable to Chandigarh? and
- B. Whether this Court has no jurisdiction to entertain this suit ?
- C. Whether the building is exempt from the provisions of the East Punjab Urban Rent Restriction Act, 1949 as applicable to Chandigarh?

The trial court took the view that the period of 5 years exemption in the case of ground floors of SCOs is to be counted from the date of electric connection or sewerage connection whichever is earlier. Therefore, the period of 5 years is to be counted from 3.1.1973 and the suit having been filed after expiry of 5 years from that date, the provisions of the Act are applicable to the building in question. The trial court dismissed the suit.

- A On appeal by the respondent, the first appellate court, in Civil Appeal No. 83 of 1983 differed from the view taken by the trial court and held that when the sewerage connection can be given to the building the ground of electric connection is sub-servient to the clause of sewerage connection; the sewerage connection was granted on 24.2.1973 and computed from that date the suit filed on 13.2.1978 was well within the period of exemption. The first appellate court set aside the judgment of the trial court and remanded the case to it for deciding the suit on merits after giving opportunity of hearing to the parties.

- C The petitioner approached the High Court of Punjab and Haryana in second appeal No. SAO 13 of 1997 in which the High Court agreed with the view taken by the first appellate court and dismissed the appeal. The judgment is under challenge in the present appeal.

- D The learned counsel for the appellant raised two-fold contentions : firstly, that the first appellate court and the High Court committed error in holding that the relevant date for computing the five years period of exemption in this case is the date of sewerage connection and not the date of electric connection; secondly, the learned counsel raised the contention that the exemption from the Act did not at all extend to the building in question since electric connection to the building was given prior to 31st January, 1973. The learned counsel placed reliance on the decision of this Court in the case of *M/s Punjab Tin Supply Co. v. Central Government and Others*, [1984] 1 SCC 206.

- F The learned counsel appearing for the respondent on the other hand supported the view taken by the first appellate court and the High Court. According to him, the courts below were right in holding that in the facts and circumstances of the case the date of sewerage connection is the material date and computed from that date the period of exemption had not expired by the date of filing the suit.

- G Before proceeding to consider the rival contentions raised by the learned counsel for the parties it will be convenient to quote the relevant portions of different notifications issued by the Chief Commissioner, Chandigarh under Section 3 of the Act granting the exemption for 5 years and prescribing the manner of computation of such period. The same are quoted below :

"No. 352 LD-73/602 dated January 31, 1973 - In exercise of the powers conferred by Section 3 of the East Punjab Urban Rent Restriction Act, 1949 (Punjab Act No. III of 1949), as applicable to the Union Territory of Chandigarh, the Chief Commissioner, Chandigarh, is pleased to direct that the provisions of the said Act shall not apply to building, constructed in the urban area of Chandigarh, for a period of five years with effect from the date the sewerage connection is granted in respect of such buildings by the competent authority under Rule 112 of the Punjab Capital (Development and Regulation) Building Rules, 1952."

Notification dated September 24, 1973 reads :

"No. 2294-LD-73/3474 - In partial modification of Chandigarh Administration, Home Department/Notification No. 352 LD-73/602 dated January 31, 1973, the Chief Commissioner, Chandigarh is pleased to direct that the period of five years' exemption shall be computed as under :

(a) Where sewerage connection can be given, from the date such connection is granted by the competent authority;

(b) Where sewerage connection cannot be granted, as for instance, in the case of booths, from the date electric connection is first given by the competent authority;

(c) In case not covered in categories (a) or (b) above from the date the building is actually occupied."

Further notifications in the matter were issued on 24 September, 1974 and on 11 June, 1982.

On a fair reading of the notifications particularly the one issued on 24th September, 1973 it is clear that where sewerage connection can be given to a building the period of exemption is to be counted from the date when such connection is granted by the competent authority; where sewerage connection cannot be granted, as for instance, in the case of booths the period is to be counted from the date electric connection is first given by the competent authority and in a case not covered under these two categories, from the date the building is actually occupied.

- A The view taken by the first appellate court which was confirmed by the High Court was that the building of which the suit property is a part is not one to which sewerage connection cannot be granted. Indeed the sewerage connection was granted to the building on 24.2.1973. Therefore, this case falls within clause (a) of the notification dated 24th September, 1973 and clause (b) does not arise for consideration. This position flows from a plain reading of the notification. But that is not end of the matter. A Bench of two learned Judges of this Court considering the challenge against constitutional validity of Section 3 of the Act and the notifications dated 31st January, 1973, 24th September, 1973 and 24th September, 1974, in the case of Punjab Tin Supply Co. (supra) held that Section 3 of the Act and the notifications are valid and effective and further that the exemption granted by the notification dated 31.1.1973 applies only to those buildings which are given sewerage connection or electric connection or which are occupied, as the case may be, on or after January 31, 1973 and not to those buildings which satisfy any of the said conditions before January 31, 1973.
- C The conclusions arrived at by this Court were summed up in the following words :
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- E "In the result we declare that Section 3 of the Act and the notification dated January 31, 1973 and the other notifications impugned in these cases are valid and effective. We further declare that the exemption granted by the notification dated January 31, 1973 applies only to those buildings which are given sewerage connection or electric connection or which are occupied, as the case may be, on or after January 31, 1973 and not to those buildings which satisfied any of the said conditions before January 31, 1973."

- F In view of the law laid down by this Court in the aforementioned case the position is inescapable that the exemption notification dated 31.1.1973 does not apply to the building of which the suit premises is a part, for the reason that electric connection was granted to the building on a date prior to 31.1.1973. It follows, therefore that the civil court has no jurisdiction to entertain the suit and the suit is not maintainable and the first appellate Court and the High Court were in error in holding that the suit was maintainable.
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- H The learned counsel for the respondent urged that the decision in Punjab Tin Supply Co. (supra) needs reconsideration and the question may

be referred to a larger Bench for consideration.

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We are not persuaded to accept the contention. The East Punjab Urban Rent Restriction Act, 1949 is a piece of beneficial legislation intended to grant protection to tenants against arbitrary and unauthorised eviction by landlords. Prior to the issue of the exemption notification the Act was in force in the Union Territory of Chandigarh with effect from 4.11.1972 and the civil court had no jurisdiction to entertain suits for eviction of tenants. An exception was made in regard to Chandigarh and exemption from the provisions of the special Act was granted for a period of 5 years. In the context it is apt and proper that the exemption notification which takes out cases from the purview of the Act, should be strictly construed and that is what has been done by this Court. We are, therefore, not inclined to accept the contention of learned counsel for the respondent that the matter should be referred to a larger Bench for decision on the correctness or otherwise of the view taken by this Court in Punjab Tin Supply Co. (supra).

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In the result, the appeal succeeds and it is allowed. The judgment of the first appellate court and the judgment of the High Court are set aside and the judgment of the trial court is confirmed. There will however be no order as to costs.

V.S.S.

Appeal allowed.

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