

PETITIONER:
GHANSHYAM DAS GUPTA

Vs.

RESPONDENT:
DEVI LAL AND OTHERS

DATE OF JUDGMENT 08/02/1989

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
KANIA, M.H.

CITATION:
1989 SCR (1) 552 1990 SCC (1) 465
JT 1989 (1) 269 1989 SCALE (1) 335

ACT:

Bihar Buildings (Lease, Rent and Eviction) Act, 1947:
Section 11(1)(d)--Default in payment of rent--For the period
prior to the Act made applicable to the area--Whether tenant
liable to be evicted on that ground.

HEADNOTE:

The appellant was inducted as a tenant in the building in question under a document of lease. Since the deed was not executed in accordance with the requirements of law, it remained inoperative. After the lease period the owner instituted a suit for eviction of the appellant and for a decree for arrears of rent. During the pendency of the suit the provisions of the Bihar Rent Act were extended to the area, and as such the prayer for withdrawal of the relief for eviction was allowed with leave to file a fresh suit. However, decree for arrears of rent was passed. Thereafter a fresh suit was filed. The Trial Court decreed the suit on both the grounds of personal necessity and default in payment of rent. On appeal the Subordinate Judge reversed the finding on the question of bona fide personal necessity, but affirmed the decree on the ground of default. The High Court, on appeal maintained the decree.

The present appeal by special leave, is against the High Court's judgment.

On behalf of the appellant, it was contended that non-payment of rent (when the Bihar Rent Act was not applicable to the area) is not relevant and so it could not be legitimately made the basis for the decree of eviction. It was submitted on behalf of the respondent that even independent of the Bihar Rent Act the appellant was under a duty to regularly pay the monthly rent and for the default, he must be presumed to be made liable for eviction under Section 11(1)(d) of the Act.

Allowing this appeal,

HELD: 1. There is no manner of doubt that the Act was applied to the area concerned on 14.2.1970 with prospective effect. The ques-

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tion whether the Legislature intended to include previous default of the tenant in payment of rent within the grounds for eviction has to be answered by construing the language

of the relevant provisions in the Bihar Rent Act. [555C-D]

2. Ordinarily where a tenant offers the rent which is refused by the landlord without any justifiable reason the tenant is held to have fully performed his duty. Under the Bihar Rent Act, however, the position is a little different. Even on the refusal by the landlord to accept rent lawfully offered by the tenant, the tenant is under a further duty as mentioned in s. 13(1) to remit such rent by postal money order to the landlord. Where a bona fide doubt arises as to the person who is entitled to receive rent the tenant is permitted by s. 13(2) to deposit the rent in the prescribed manner. The latter part of s. 11(1)(d), quoted above, deals with cases attracting s. 13. The result is that if a tenant has made a proper offer to pay the rent and the landlord has unreasonably refused to accept it, the tenant cannot escape the liability of eviction under clause (d) unless he proves that he had further remitted the rent by postal money order. This position is fully settled. If the situation is analysed in this light it will be seen that clause (d) can be held to apply only where s. 13 of the Bihar Rent Act is attracted. If s. 13 cannot be applied to a particular situation, clause (d) also would not apply. Section 13 could not obviously be applicable before the Act was extended to the area in question. Consequently it must be held that the default for the earlier period cannot be the basis for a decree of eviction under s. 11(1)(d). [557G-H; 558A-C]

K.C. Jain v.B.S. Grewal & Ors., [1965] 2 S.C.R. 36 distinguished.

3. Since the question is dependent on an appraisal of the evidence led by the parties, the case should be remitted to the first appellate court for the decision on the question whether the landlord has proved the tenant's default in payment of rent for the period from December 1973 to April 1974. If the Subordinate Judge comes to the conclusion that the tenant did default within the meaning of s. 11(1)(d) of the Act for two months or more during this period, he would decree the suit; otherwise the suit would be dismissed. [559B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2984 of 1983.

From the Judgment and Order dated 19.5.1982 of the Patna High Court in Appellate Decree No. 275 of 1981.

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Govind Mukhoty and K.N. Rai for the Appellant.

F.S. Nariman and Ranjit Kumar for the Respondents.

The Judgment of the Court was delivered by

SHARMA, J. The question which arises in this appeal by special leave is whether the default by a tenant in payment of rent for the period before the Bihar Buildings (Lease, Rent and Eviction) Act, 1947 (hereinafter referred to as the Bihar Rent Act), was extended and became applicable, can be the basis for holding him a defaulter within the meaning of clause (d) of s. 11(1) of the Bihar Rent Act, 1947 and, therefore, liable to be evicted.

2. The building in question is in Danapur Cantonment area near the town of Patna. The appellant was inducted as a tenant therein by the owner one Janki Devi under a document of lease for a fixed period. Since the deed was not executed in accordance with the requirements of law it remained inoperative. After the period was over, Janki Devi instituted a suit on 10.12.1968 for eviction of the appellant and

for a decree for arrears of rent for the period May to August 1968, which was registered as Title Suit No. 3 17 of 1968. The Bihar Rent Act was not then applicable to Danaput Cantonment. During the pendency of the case on 14.2.1970 the provisions of the Bihar Rent Act were extended to this area. Presumably in view of the fact that the lease deed could not be treated to be valid in the eye of law, a prayer for withdrawal of the relief for eviction was made by the plaintiff and was allowed with leave to file a fresh suit. A decree for arrears of rent, however, was passed.

3. The present suit was filed on 28.5.1974 for eviction of the appellant on the grounds of bona fide personal necessity and default in payment of rent for the periods May to July, October and November 1968, December 1969 to February 1970, and December 1973 to April 1974. The trial court decreed the suit on both the grounds. On appeal by the appellant, the learned Subordinate Judge reversed the finding on the question of bona fide personal necessity but affirmed the decree on the ground of default. The High Court has by the impugned judgment maintained the decree.

4. The appellant denied the allegation that he has defaulted in payment of rent. The first appellate court on a consideration of the evidence held that the appellant did default in payment of rent for

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May, June, July, October and November 1968, and December 1969 to February 1970, and on that basis decreed the suit. It has been contended on behalf of the appellant that non-payment of rent for the period before 14.2.1970 (when the Bihar Rent Act was not applicable to the Cantonment area) is not relevant, and since the rent of less than a month in February 1970 remained unpaid after the Bihar Rent Act was extended, it could not be legitimately made the basis for the decree of eviction. The High Court agreed with the appellant that the Bihar Rent Act did not apply to the Cantonment area with retrospective effect, but proceeding further it said that in view of the decision in Kapur Chand Jain v. B.S. Grewal and others, [1965] 2 SCR 36, it must be held that the Act, although prospective in its application, takes into account the default in payment of rent of the earlier period.

5. There is no manner of doubt that the Act was applied to the area concerned on 14.2.1970 with prospective effect. The question whether the Legislature intended to include previous default of the tenant in payment of rent within the grounds for eviction has to be answered by construing the language of the relevant provisions in the Bihar Rent Act. Although in Kapur Chand's case (supra) a similar dispute was raised, it is not permissible to apply the decision irrespective of the difference in language of the two statutes. It is true that s. 9 of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Punjab Act) which was relevant in the reported case also dealt with the grounds for eviction of a tenant, but there was clear indication in the section that the grounds for eviction included the earlier default also. The relevant portion of the section, as quoted in the judgment, reads as follows:

"9(1) Notwithstanding anything contained in any other law for the time being in force, no land-owner shall be competent to eject a tenant except when such tenant:

- (i) is a tenant on the area reserved under this Act or is a tenant of a small landowner;
- or
- (ii) fails to pay rent regularly without

sufficient cause; or
(iii) is in arrears of rent at the commencement of this Act;
or
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Explanation--For the purposes of clause (iii), a tenant shall be deemed to be in arrears of rent at the commencement of this Act, only if the payment of arrears is not made by the tenant within a period of two months from the date of notice of the execution of decree or order, directing him to pay such arrears of rent."

It will be seen that clause (iii) in unambiguous terms refers to the arrears of rent for the period before the commencement of the Punjab Act. Dr. Y.S. Chitale, learned counsel for the landlord-Respondent, contended that the judgment of this Court rested on the interpretation of clause (ii) of s. 9(1) of the Punjab Act which did not contain any words similar to those in clause (iii). Strongly relying on the following observation:

"In our opinion, the conduct of the tenant prior to the coming into force of the new section can be taken into account. No doubt a statute must be applied prospectively. But a statute is not applied retrospectively because a part of the requisite for its action is drawn from a moment of time prior to its passing. The clause in question makes a particular conduct the ground for an application for eviction."

It was urged that the Bihar Act contained similar provisions and the ratio in Kapur Chand's case is fully applicable. In view of vital difference in the language of the two Acts, we do not find ourselves in a position to accept the argument.

6. Having regard to the scheme of the Punjab Act and the language used therein specially the words mentioned in clause (iii) of s. 9(1) it is apparent that the Act took into consideration the earlier default in payment of rent within the grounds for eviction. There was no dispute in Kapur Chand's case about the construction of the section. The point which was raised before this Court was whether the past conduct of the tenant could be legitimately taken into account by the statute which was prospective in application. And this point was answered in favour of the landlord. In the case before us the appellant is not contending that the past conduct of a tenant cannot be taken into account by the Legislature if it so intends. The question is whether such an intention can be spelled out from s. 11(1)(d) of the Bihar Rent Act which reads as follows:

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"11. Eviction of tenants. (1) Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Disputes Act, 1947 and to those of section 12, where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the Court on one or more of the following grounds:

(d) where the amount of two months' rent lawfully payable by the tenant and due from him is in arrears by not having been paid within the time fixed by contract or, in the absence of such contract, by the last day of

the month next following that for which the rent is payable or by not having been validly remitted or deposited in accordance with section 13 ;"

7. Dr. Chitale has strenuously contended that even independent of the Bihar Rent Act the tenant-appellant- was under a duty to regularly pay the monthly rent by the corresponding succeeding month, under the provisions of the Transfer of Property Act, and if he defaulted in due performance of his duty he must be presumed to be made liable for eviction by the Legislature while enacting s. 11(1)(d). He emphasised that clause (d) was not saddling the tenant with a new duty which was not there earlier. The Act intends to deprive the erring tenant negligent in payment of rent from its benefits and there is, therefore, no reason to hold that his earlier conduct is not to be taken into account. The argument does not appear to be sound inasmuch as it ignores the following words towards the end of clause (d), quoted above, which appear to us to be very illuminating: "... or by not having been validly remitted or deposited in accordance with section 13;"

8. Ordinarily where a tenant offers the rent which is refused by the landlord without any justifiable reason the tenant is held to have fully performed his duty. Under the Bihar Rent Act, however, the position is a little different. Even on the refusal by the landlord to accept rent lawfully offered by the tenant, the tenant is under a further duty as mentioned in s. 13(1) to remit such rent by postal money order

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to the landlord. Where a bona fide doubt arises as to the person who is entitled to receive rent the tenant is permitted by s. 13(2) to deposit the rent in the prescribed manner. The latter part of s. 11(1)(d), quoted above, deals with cases attracting s. 13. The result is that if a tenant has made a proper offer to pay the rent and the landlord has unreasonably refused to accept it, the tenant cannot escape the liability of eviction under clause (d) unless he proves that he had further remitted the rent by postal money order. This position is fully settled. If the situation is analysed in this light it will be seen that clause (d) can be held to apply only where s. 13 of the Bihar Rent Act is attracted. If s. 13 cannot be applied to a particular situation, clause (d) also would not apply. S. 13 could not obviously be applicable before the Act was extended to the area in question. Consequently it must be held that the default for the earlier period cannot be the basis for a decree of eviction under s. 11(1)(d).

9. Mr. F.S. Nariman, who also argued on behalf of the respondent, feebly suggested that the extension of the Bihar Rent Act to the Cantonment area may be held to be applicable with retrospective effect in view of sub-sections (2) and (4) of s. 3 of the Cantonments (Extension of Rent Control Laws) Act, 1957. Dr. Chitale also referred to the observation in paragraph 8 of the judgment in Smt. Sant Kaur and another v. Ganesh Chaudhary, AIR 1949 Patna 137 on the question of retrospectivity. We do not find any merit in the argument. The language of the Bihar Rent Act is clear and does not admit any doubt about its prospective nature. So far as s. 3 of the Cantonments Act is concerned, sub-section (2) merely permits the Central Government to extend any rent enactment from an earlier date subject to certain limitations, and sub-section (4) is irrelevant in the present context as its scope is limited to dealing with orders and decrees passed before the extension of a rent law to a

Cantonment area. When this was pointed out to Mr. Nariman, he did not further pursue with his argument, and Dr. Chitale in express terms conceded that the Bihar Rent Act could not be interpreted to have been extended to the Cantonment area with retrospective effect. In that view, we need not detain ourselves further on this point.

10. Mr. Nariman lastly urged that the appellant also defaulted in payment of rent for December 1973 to April 1974, a period of five months, after the Act was applied to the cantonment area, and the impugned decree, therefore, should not be disturbed. On behalf of the appellant it was suggested that in view of the finding in paragraph 12 of the judgment of the first appellate court it should be presumed that the

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respondents' case of default for the subsequent period was rejected. We have been taken through the judgments of the first appellate court and the High Court and we find that the controversy with respect to the alleged default for the later period has been left undetermined. Since the question is dependent on an appraisal of the evidence led by the parties, we are of the view that the case should be remitted to the first appellate court for the decision on the question whether the plaintiff-landlord has proved the defendant-tenant's default in payment of rent for the period December 1973 to April 1974. If the learned Subordinate Judge comes to the conclusion that the tenant did default within the meaning of s. 11(1)(d) of the Bihar Buildings (Lease, Rent and Eviction) Act, 1947 for two months or more during this period, he would decree the suit; otherwise the suit would be dismissed.

11. In the result, the appeal is allowed, the judgments of the High Court and the first appellate court are set aside and the case is remitted to the first appellate court for fresh decision in the light of the observations made above. The costs shall follow the final result in the suit.

G.N.

Appeal al-

lowed.

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