REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10529 OF 2014
(ARISING OUT OF SLP (C) NO.11696 OF 2007)

SRI SIDHHARTH VIYAS & ANR. …APPELLANTS

VERSUS

RAVI NATH MISRA & ORS. …RESPONDENTS

J U D G M E N T

ADARSH KUMAR GOEL J.

1. Leave granted.

2. This appeal has been preferred against the Judgment and Order dated 7th May, 2007 of the High Court of Judicature at Allahabad, Civil Side in Civil Miscellaneous Writ Petition No.47201 of 2002.

3. The question for consideration is whether Section 12(3) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short "the Act") providing for 'deemed vacancy' is applicable to a situation where the tenant or a member of his family builds, acquires or otherwise gets a vacant building in

the area concerned after commencement of the tenancy but prior to application of the Act to the tenancy in question.

4. Brief reference to facts giving rise to the question is necessary. The accommodation in question was let out for residential purpose w.e.f. 1st June, 1981 and was assessed for house tax for the first time on 1st October, 1983. Under Section 2(2) of the Act, the Act which otherwise came into force on 15th July, 1972, was not applicable to the building during ten years from the date on which its construction was completed. The construction is deemed to be completed, inter alia, on the date on which the first assessment of letting value is made by the local authority concerned, which in the present case was 1st October, 1983. Thus, the Act became applicable to the accommodation in question in the year 1983. On 7th June, 1987, the tenant purchased another residential house bearing number 198 at Safipur-II, Kanpur Nagar.

5. The City Magistrate, Kanpur, in his capacity as Rent Controller, vide Order dated 5th September, 2002, declared the premises in question to be vacant under Section 12(3) of the Act on account of purchase of residential house by the wife of the tenant in the year 1987. The tenant filed Civil Miscellaneous Writ Petition No.47201 of 2002 against the Order of the Rent Controller declaring the premises in question to be vacant and also the subsequent order dated 30th

September, 2002 releasing the accommodation in favour of the landlord under Section 16 of the Act. The High Court accepted the petition holding that no vacancy can be declared if the tenant or his family member purchased the house before the Act became applicable. Reliance was placed on a Five-Judge Full Bench of the High Court in ***Mangi Lal*** vs. ***Additional District Judge & others.***[1]. It is against the said Order that the present appeal has been preferred.

6. We have heard learned counsel for the parties.

7. The Act provides for the regulation of letting and rent and the eviction of tenants from certain classes of buildings situated in urban areas and for matters connected therewith. Reference to all the provisions of the Act may not be necessary for adjudication of the issue involved, except to Section 12 which provides for deemed vacancy of a building in certain cases. Section 12(3) reads as follows :

> *"12(1) .....*
>
> *(2) .....*
>
> *(3) In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to*

1 (1980) Allahabad Rent Cases, 55

> *have ceased to occupy the building under his tenancy:*
>
> *Provided that if the tenant or any member of his family had built any such residential building before the date of commencement of this Act, then such tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date.*
>
> *Explanation.--For the purposes of this sub-section--*
>
> *(a) a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee;*
>
> *(b) the expression "any member of family", in relation to a tenant, shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant."*

8. Learned counsel for the appellant-landlord submits that under the scheme of the Act, the above provision should be interpreted to mean that a tenant who has already acquired another residential building in the same city, is not entitled to protection against eviction even if such acquisition is before commencement or applicability of the Act, as the object of the Act is to protect a needy person and not a person who has already acquired another building. No doubt the expression "***builds or otherwise acquires in a vacant state or gets vacated***" may give an impression that the provision is applicable in respect of acquisition after the Act

becomes applicable, the context and the scheme of the Act clearly indicate that any acquisition of alternative accommodation by the tenant after commencement of the tenancy is covered by the provision This becomes clear when reference is made to the proviso which purports to be more beneficial to the tenant in giving extra protection to the tenancy for one year from the date of commencement of the Act. The proviso clearly refers to a situation where the tenant had built the alternative accommodation before the commencement of the Act. The scope of proviso is always narrower than the main provision. He submitted that the Full Bench judgment has been wrongly relied upon by the High Court for the contrary view and if so read, the same does not lay down correct law. Reference has also been made to Judgments of this Court in ***Goppumal*** vs. ***Thakurji Shriji Shriji Dwarakadheeshji & another***[2] and ***Gajanan Dattatraya*** vs. ***Sherbanu Hasang Patel & others***[3] which have been referred to in the Full Bench Judgment.

9. Learned counsel for the respondent-tenant opposed the above submission. According to him, on a plain reading, Section 12(3) can apply only if acquisition of alternative premises by the tenant is after the Act becomes applicable. In the present case, the Act became applicable only in the year 1993 and prior thereto, by virtue

2 (1969) 1 SCC 792
3 (1975) 2 SCC 668

of Section 2(2), the building was exempted from the operation of the Act. He, thus, supports the view taken by the High Court.

10. We have given due consideration to the rival submissions.

11. The object of rent law is to balance the competing claims of the landlord on the one hand to recover possession of building let out to the tenant and of the tenant to be protected against arbitrary increase of rent or arbitrary eviction, when there is acute shortage of accommodation. Though, it is for the legislature to resolve such competing claims in terms of statutory provisions, while interpreting the provisions the object of the Act has to be kept in view by the Court. Unless otherwise provided, a tenant who has already acquired alternative accommodation is not intended to be protected by the Rent Act.

12. In ***Joginder Pal*** vs. ***Naval Kishore Behal***[4], this Court observed :

> *"5. It will be useful to state the principles relevant for interpretation of a provision contained in a rent control law like the one with which we are dealing. The spurt of provincial rent control legislations is a necessary consequence of population explosion. In Prabhakaran Nair v. State of T.N. [(1987) 4 SCC 238] the Court noticed craving for a home — a natural human instinct, intensified by post-war migration of human beings en bloc place to place, the partition of the country and uprooting of the people from their hearth and home as vital*

4 (2002) 5 SCC 397

factors leading to acute housing shortage persuading the legislatures to act and enact rent control laws. The Court emphasized the need of making the landlord and tenant laws rational, humane, certain and capable of being quickly implemented. Benefit of society at large needs an equalistic balance being maintained between apparently conflicting interests of the owners of the property and the tenant by inducing and encouraging the landlords to part with available accommodation for reasonable length of time to accommodate tenants without unreasonably restricting their right to have the property being restored to them, more so, when they genuinely require it. Such limited safeguarding of landlords' interest ensures a boost to construction activity which in turn results in availability of more houses to accommodate more human souls with a roof on their heads. Sabyasachi Mukharji, J., as His Lordship then was, articulated the empty truism in such words as have become an oft-quoted quotation (SCC p. 262, para 36)—

"Tenants are in all cases not the weaker sections. There are those who are weak both among the landlords as well as the tenants."

6. In Malpe Vishwanath Acharya v. State of Maharashtra [(1998) 2 SCC 1] this Court emphasized the need of social legislations like the Rent Control Act striking a balance between rival interests so as to be just to law. "The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society." (SCC p. 22, para 29) While the shortage of accommodation makes it necessary to protect the tenants to save them from exploitation but at the same time the need to protect tenants is coupled with an obligation to ensure that the tenants are not conferred with a benefit disproportionately larger than the one needed. Socially progressive legislation

must have a holistic perception and not a short-sighted parochial approach. Power to legislate socially progressive legislations is coupled with a responsibility to avoid arbitrariness and unreasonability. A legislation impregnated with tendency to give undue preference to one section, at the cost of constraints by placing shackles on the other section, not only entails miscarriage of justice but may also result in constitutional invalidity.

7. In Arjun Khiamal Makhijani v. Jamnadas C. Tuliani [(1989) 4 SCC 612] this Court dealing with rent control legislation observed that provisions contained in such legislations are capable of being categorized into two: those beneficial to the tenants and those beneficial to the landlord. As to a legislative provision beneficial to the landlord, an assertion that even with regard to such provision an effort should be made to interpret it in favour of the tenant, is a negation of the very principle of interpretation of a beneficial legislation.

8. The need for reasonable interpretation of rent control legislations was emphasized by this Court in Bega Begum v. Abdul Ahad Khan. [(1979) 1 SCC 273] Speaking in the context of reasonable requirement of landlord as a ground for eviction, the Court guarded against any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. In Kewal Singh v. Lajwanti [(1980) 1 SCC 290] this Court has observed, while the rent control legislation has given a number of facilities to the tenants, it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance, one of the grounds for eviction which is

contained in almost all the Rent Control Acts in the country is the question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed so as to make the relief granted to the landlord real and practical. Recently in Shiv Sarup Gupta v. Dr Mahesh Chand Gupta [(1999) 6 SCC 222] the Court has held that the concept of bona fide need or genuine requirement needs a practical approach instructed by the realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

9. The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords — both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble."

13. In ***Reserve Bank of India*** vs. ***Peerless General Finance &***

Investment Co. Ltd. & others[5], it was observed :

> *"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Prize Chit" in Srinivasa and we find no reason to depart from the Court's construction."*

14. The Full Bench of the High Court in ***Mangi Lal (supra),*** rightly held that the grammar cannot control the interpretation of the provision which has to be read in the context. It will be appropriate

5 (1987) 1 SCC 424

to reproduce relevant part of the said Judgment which is as follows :

> *"43. The interpretation canvassed on behalf of the landlord is only grammatical and so ultra-legalistic. It is what is called the literal approach. In Kammins v. Zenith Investments Ltd. (1971) AC 850 Lord Diplock drew a clear distinction between the 'literal approach' and the 'purposive approach', and used the purposive approach to solve the question.*
> *44. Recently, the House of Lords considered the rules of interpretation of statutes in Stock v. Frank Jones Tiption Ltd. (1978) 1 WLR 231. In that case Viscount Dilhorne said:*
> *"It is now fashionable to talk of a purposive construction of a statute, but it has been recognised since the 17th century that it is the task of the judiciary in interpreting an Act to seek to interpret it 'according to the intent of them that made it' (Coke 4 Inst 33)."*
> *The better approach is the purposive approach, namely, to seek the legislative intent and not be led away by a strict literal construction of the words.*
>
> *45. Lord Denning put it very pithily in Seaford Count Estates Ltd. v. Asher (1949) 2 KB 281 as under:*
>
> *"We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it. That is an easy thing to do, and it is a thing to which Lawyers are too often prone. We sit here to find out the intention of Parliament and of Ministers and carry out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis."*
>
> *The Court's function is to clarify the language so as to satisfy the legislative intent.*
>
> *46. The word 'has' has been used in the Act in many other provision, e.g.,*

> *section 20 permits a suit for ejectment where the tenant 'has sublet'. There the word 'has' may have a different significance, because of, inter-alia, its legislative history."*

15. Thus, in our view, mere use of present tense in Section 12(3) is not intended to limit the applicability of the provision to acquisition of accommodation by the tenant after the Rent Act becomes applicable. In the context, the provision also covers the situation where the tenant has acquired alternative accommodation before the applicability of the Rent Act. This view is further supported by the language of the proviso. The proviso clearly shows that the provision in question is not intended to be limited to a situation where alternative accommodation is acquired after the Act commences or becomes operative. The provision also covers a situation where the alternative accommodation is acquired prior to that. The scope of proviso is narrower than the main provision.

16. In ***S. Sundaram Pillai & others*** vs. ***V.R. Pattabiraman & others***[6], it was observed:

> *"27. The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first take up the question of the nature, scope and extent of a proviso. The well established rule of interpretation of a proviso is that a proviso may have three separate functions.*

6 (1985) 1 SCC 591

Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.

28. Craies in his book Statute Law (7th Edn.) while explaining the purpose and import of a proviso states at p. 218 thus:

"The effect of an exception or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it.... The natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso."

29. Odgers in Construction of Deeds and Statutes (5th Edn.) while referring to the scope of a proviso mentioned the following ingredients:

"p. 317. Provisos —These are clauses of exception or qualification in an Act, excepting something out of, or qualifying something in, the enactment which, but for the proviso, would be within it.

p. 318. Though framed as a proviso, such a clause may exceptionally have the effect of a substantive enactment."

30. Sarathi in Interpretation of Statutes at pages 294-295 has collected the following principles in regard to a proviso:

(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

(c) Where the proviso is directly

repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.
(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation: but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.
(e) The proviso is subordinate to the main section.
(f) A proviso does not enlarge an enactment except for compelling reasons.
(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.
(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.
(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.
(j) A proviso may sometimes contain a substantive provision."

17. We, thus, hold that the view taken by the High Court that acquisition of alternative accommodation by the tenant, prior to enforcement of the Act, is not covered by Section 12(3) of the Act is not correct in law. The Full Bench Judgment, to the extent it supports the said view, also does not lay down correct law and will stand overruled.

18. Accordingly, we allow this appeal, set aside the impugned order passed by the High Court and restore the order passed by the Rent Controller. No costs.

.....J.
(T.S. THAKUR)

.....J.
(ADARSH KUMAR GOEL)

.....J.
(R. BANUMATHI)

NEW DELHI
NOVEMBER 25, 2014