

Ramanandan Prasad
Narayan Singh
v.
Mahanth Kapildeo
Ram Jee and
Another
—
Chandrasekhara
Aiyar J.

acquiesced, during all these years in the construction which the Patna High Court has been placing upon the section from the very next year after the enactment of the statute. Having regard to the great obscurity in the language employed in the relevant provisions and the inaction of the Legislature, it is, in our opinion, legitimate to infer that the view expressed by the Patna High Court is in accord with the intention of the Legislature.

The appeals fail and are dismissed with costs, only one set in all of them together.

Appeals dismissed

Agent for the appellants : *Tarachand Brij Mohanlal.*

Agent for the respondent : *R. C. Prasad.*

RAI BRIJ RAJ KRISHNA AND ANOTHER

v.

S. K. SHAW AND BROTHERS.

[SAIYID FAZL ALI, MEHER CHAND MAHAJAN,
MUKHERJEA and CHANDRASEKHARA AIYAR JJ.]

1951

Feb. 2.

Bihar Buildings (Lease, Rent and Eviction) Control Act (III of 1947), s. 11—Order of Controller for eviction on the ground of non-payment of rent—Suit to set aside order—Jurisdiction of civil court—Question whether there was non-payment—Finality of Controller's decision.

Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, has entrusted the Controller with a jurisdiction, which includes the jurisdiction to determine whether there is non-payment of rent or not, as well as the jurisdiction, on finding that there is non-payment of rent, to order eviction of a tenant. Therefore, even if a Controller has wrongly decided the question whether there has been non-payment of rent, his order for eviction on the ground that there has been non-payment of rent cannot be questioned in a civil court.

Queen v. Commissioners for Special Purposes of Income-Tax (21 Q.B.D. 313) and *Colonial Bank of Australasia v. Willan* (L.R. 5 P.C. 417) relied on.

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CIVIL APPELLATE JURISDICTION: Appeal from a judgment and decree of the Patna High Court dated 25th March, 1949, in A.S. 2280 of 1948 reversing an appellate decree of the Subordinate Judge in Suit No. 62 of 1948.

Baldev Sahay (T. K. Prasad, with him) for the appellant.

N. C. Chatterjee (H. J. Umrigar, with him) for the respondent.

1951. February 2. The judgment of the Court was delivered by

Fazl Ali J.

FAZL ALI J.—This is an appeal from a judgment and decree of the High Court of Judicature at Patna reversing the appellate decree of a Subordinate Judge in a suit instituted by the respondents. The facts of the case are briefly these. The respondents have been in occupation as a monthly tenant of several blocks of premises belonging to the appellants at a monthly rental of Rs. 112. The rent for the months of March, April and May, 1942, having fallen into arrears, they remitted it along with the rent for June, on 28th June, 1947, by means of two cheques. As the appellants did not accept the cheques, on 4th August, 1947, the respondents remitted the amount subsequently by postal money order. On 12th August, 1947, the appellants, maintaining that there was non-payment of rent and hence the respondents were liable to be evicted, under section 11(1) (a) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (Bihar Act III of 1947), applied to the House Controller for the eviction of the respondents from the premises. Section 11 (1)(a) of the Act runs as follows :—

“Notwithstanding anything contained in any agreement or law to the contrary and subject to the provisions of section 12, where a tenant is in possession of any building, he shall not be liable to be evicted therefrom, whether in execution of a decree or otherwise, except—

(a) in the case of a month to month tenant, for non-payment of rent or breach of the conditions of the tenancy, or for subletting the building or any portion thereof without the consent of the landlord, or if he is an employee of the landlord occupying the building as an employee, on his ceasing to be in such employment ;”

On 30th August, 1947, the respondents, whose money had in the meantime been returned by the appellants, deposited the rent up to the month of June in the Office of the House Controller. Notwithstanding this deposit, the House Controller passed an order on the 10th November, directing the eviction of the respondents by 10th May, 1948, and holding that they had made themselves liable to eviction by reason of non-payment of rent. The order of the House Controller was upheld by the Commissioner on appeal on the 27th April, 1948, and thereupon the respondents filed the present suit in the Patna Munsif's Court for a declaration that the order of the Controller dated the 10th November, 1947, was illegal, *ultra vires* and without jurisdiction. The suit was dismissed by the Munsif and his decree was upheld on appeal, but the High Court decreed the suit holding that the order of the Rent Controller was without jurisdiction. The appellants were thereafter granted leave to appeal by the High Court, and they have accordingly preferred this appeal.

The High Court has delivered a somewhat elaborate judgment in the case, but it seems to us that the point arising in this appeal is a simple one. The main ground on which the respondents have attacked the order of eviction passed by the House Controller is that in fact there was no non-payment of rent, and, since no eviction can be ordered under the Bihar Act unless non-payment is established, the House Controller had no jurisdiction to order eviction. On the other hand, one of the contentions put forward on behalf of the appellants is that there was non-payment of rent within the meaning of that expression as used in the Act, since the rent was not paid as and when it

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fell due. It was pointed out that the rent for the month of March became due in April and the rent for April became due in May, but no step was taken by the respondents to pay the arrears until the 28th June, 1947. It appears that at the inception of the tenancy, the respondents had paid one month's rent in advance, and it had been agreed between them and the appellants that the advance rent would be adjusted whenever there was default in payment of rent for full one month. It was however pointed out that the advance payment could be adjusted only for one month's rent, but, in the present case, the rent for three months had become due, and since in a monthly tenancy the rent is payable for month to month, the rent for each month becoming due in the subsequent month, non-payment of that rent at the proper time was sufficient to attract the provisions of section 11 (1) (a) of the Act. The appellants also raised a second contention, namely, that having regard to the scheme of the Act, the House Controller was fully competent to decide whether the condition precedent to eviction had been satisfied, and once that decision had been arrived at, it could not be questioned in a civil court. This contention was accepted by the first two courts, and the first appellate court dealing with it observed as follows :—

“But the Buildings Control Act has authorised the Controller to decide whether or not there is non-payment of rent and it is only when he is satisfied that there has been non-payment of rent that he assumes jurisdiction. If the question of jurisdiction depends upon the decision of some fact or point of law, and if the court is called upon to decide such question, then such decision cannot be collaterally impeached (vide 12 Patna 117). In my opinion when the Controller assumed the jurisdiction on being satisfied that there was non-payment of rent and proceeded to pass an order of eviction. I think the Civil Court can have no jurisdiction to challenge the validity of such order.”

The High Court did not however accepted this view and after referring to section 111 of the Transfer of

Property Act, proceeded to propound its own view in these words :—

“Regard being had to the circumstances in which the Act under consideration was enacted and its object, as stated in the preamble as being ‘to prevent unreasonable eviction of tenants’ from buildings, it would seem that the expression ‘non-payment of rent in section 11 in the context in which it is used must be given an interpretation which would have the effect of enlarging the protection against determination of a tenancy enjoyed by a tenant under the ordinary law. The Legislature, therefore, by enacting that a tenant shall not be liable to be evicted ‘except for non-payment of rent’ should be held to have intended to protect a tenant from being evicted from a building in his possession for being a defaulter in payment of rent, if he brings into Court all the rent due from him before the order of his eviction comes to be passed.....

If, as contended for on behalf of the respondents, section 11 of the Act were to be construed as entitling a landlord to apply for eviction of a tenant on the ground of irregular payment of rent amounting to ‘non-payment’ of rent and as empowering the Controller to determine as to whether irregular payment of rent amounts to non-payment of rent within the meaning of sub-section (1) of section 11, and sub-section (3) of section 18 were to be construed as making the decision of the Controller on this question of law a final one, it will appear that not only this Act will have conferred a right upon the landlord very much in excess of the right that he enjoys under the ordinary law in the matter of determination of tenancies, but that it will have conferred very much larger power on the Controller than that possessed by the Civil Courts under the ordinary law in the matter of passing decrees for eviction of tenants. The principle of law and equity on which relief against forfeiture for ‘non-payment of rent’ is based, will have been completely abrogated, and the protection of a tenant in possession of a building instead of being enlarged will

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have been very much curtailed. A construction of these provisions, which is calculated to bring about these consequences, cannot and is not in accordance with the circumstances to which this Act was intended to apply and indeed cannot be accepted. The contention of Mr. Lalnarain Sinha on behalf of the respondent that the circumstances disclosed in the petition raised the question for determination by the Controller whether a case of non-payment of rent in law was established, and his decision of that question, even if wrong in law, is not liable to be questioned in the Civil Court must be over-ruled."

It seems to us that the view taken by the High Court is not correct. Section 11 begins with the words "Notwithstanding anything contained in any agreement or law to be contrary," and hence any attempt to import the provisions relating to the law of transfer of property for the interpretation of the section would seem to be out of place. Section 11 is a self-contained section, and it is wholly unnecessary to go outside the Act for determining whether a tenant is liable to be evicted or not, and under what conditions he can be evicted. It clearly provides that a tenant is not liable to be evicted except on certain conditions, and one of the conditions laid down for the eviction of a month to month tenant is non-payment of rent. Sub-section (3) (b) of section 11 provides that the "Controller shall, if he is satisfied that the claim of the landlord is bona fide, make an order directing the tenant to put the landlord in possession of the building" and if he is not so satisfied he shall make an order rejecting the application. Section 16 empowers the Controller to make enquiries and inspections and to summon and enforce the attendance of witnesses and compel the production of documents in the same manner as is provided in the Code of Civil Procedure. Section 18 provides that any person aggrieved by an order passed by the Controller may within 15 days of the receipt of such order by him, prefer an appeal to the Commissioner of the Division, and it also prescribes the procedure for the hearing of the appeal. Sub-section (3)

of this section states that "the decision of the Commissioner and subject only to such decision, an order of the Controller shall be final, and shall not be liable to be questioned in any Court of law whether in a suit or other proceeding by way of appeal or revision." The Act thus sets up a complete machinery for the investigation of those matters upon which the jurisdiction of the Controller to order eviction of a tenant depends, and it expressly makes his order final and subject only to the decision of the Commissioner. The Act empowers the Controller alone to decide whether or not there is non-payment of rent, and his decision on that question is essential before an order can be passed by him under section 11. Such being the provisions of the Act, we have to see whether it is at all possible to question the decision of the Controller on a matter which the Act clearly empowers him to decide. The law on this subject has been very lucidly stated by Lord Esher M. R. in *The Queen v. Commissioners for Special Purposes of the Income-Tax*(¹), in these words :—

"When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may intrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do

(1) 21 Q.B.D.313, at 319.

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something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

On the same lines are the following observations of Sir James Colville in *The Colonial Bank of Australasia v. Willan*⁽¹⁾, which is a case dealing with the principles on which a writ of *certiorari* may be issued:—

"Accordingly, the authorities...establish that an adjudication by a Judge having jurisdiction over the subject-matter is, if no defect appears on the face of it, to be taken as conclusive of the facts stated therein; and that the Court of Queen's Bench will not on *certiorari* quash such an adjudication on the ground that any such fact, however essential, has been erroneously found."

There can be no doubt that the present case falls within the second category mentioned by Lord Esher, because here the Act has entrusted the Controller with a jurisdiction, which includes the jurisdiction to determine whether there is non-payment of rent or not, as well as the jurisdiction, on finding that there is non-payment of rent, to order eviction of a tenant. Therefore, even if the Controller may be assumed to have wrongly decided the question of non-payment of rent, which by no means is clear, his order cannot be questioned in a civil court. It seems to us that on this short ground this appeal must succeed, and we

(1)5P. C. 417, at p. 443.

accordingly allow the appeal, set aside the judgment and decree of the High Court and restore the decree of the courts below. The appellants will be entitled to costs throughout.

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Appeal allowed.

Agent for the appellant : *R. C. Prasad.*

Agent for the respondent : *S. P. Varma.*

BADRI NARAIN JHA AND OTHERS

v.

RAMESHWAR DAYAL SINGH AND OTHERS.

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Feb. 5.

[SAIYID FAZL ALI, MEHAR CHAND MAHAJAN,
MUKHERJEA and CHANDRASEKHARA AIYAR JJ.]

Landlord and tenant—Merger—One of several joint holders of mokarrari interest acquiring portion of lakhraj interest—No merger—Partition amongst lessees inter se—Integrity of lease, qua lessor, not affected.

If a lessor purchases the whole of the lessee's interest, the lease is extinguished by merger, but there can be no merger or extinction where one of several joint holders of the mokarrari interest purchases portion of the lakhraj interest.

A partition *inter se* amongst several mokarraridars does not in any way affect the integrity of the tenancy or make each holder of an interest in it a separate holder of a different tenancy, and notwithstanding such partition the mokarraridars remain liable *qua* the lessor or the payment of the whole rent as one tenant.

White v. Tyndall (13 App. Cas. 263) referred to.

CIVIL APPELLATE JURISDICTION : Appeal from a judgment and decree of the High Court of Judicature at Patna dated 14th February, 1946, in Appeal from Original Decree No. 117 of 1942 arising out of Title Suit No. 9 of 1939 : Civil Appeal No. 40 of 1950.

S. C. Misra for the appellant.

N. C. Chatterjee (*P. B. Gangoli*, with him) for the respondent.