

A PRASHANT RAMACHANDRA DESHPANDE
v.
MARUTI BALARAM HAIBATTI

APRIL 7, 1995

B [R.M. SAHAI AND N. VENKATACHALA, JJ.]

Rent and Eviction—Karnataka Rent Control Act, 1961 :

C *Tenant—Dismissal of Revision Petition—Undertaking to vacate premises within six months—Held filing of undertaking does not preclude tenant from filing a special Leave Petition—Principle of ‘Approbate and Reprobate’ and Doctrine of Election held inapplicable—Constitution of India, 1950—Article 136.*

D The appellant-tenant whose revision was dismissed by Karnataka High Court for non compliance with sub-section(1) of Section 29 of the Karnataka Rent Control Act, 1961 gave an undertaking to vacate the premises within six months. However, he filed a Special Leave Petition before this Court. Relying on the decision of this Court in *R.N. Gosai v. Yashpal Dhir*, [1992] 4 SCC 683 it was contended by the landlord that since law does not permit a person to approbate and reprobate which E principle was founded on doctrine of election, the tenant was precluded from filing a petition under Article 136.

Directing the matter to be listed before a larger Bench, this Court

F HELD: 1. Remedy under Article 136 is a constitutional right. It cannot be taken away by legislation much less by invoking principle of election or estoppel. The jurisdiction exercised by this Court under Article 136 is an extraordinary jurisdiction. It is not hedged with any restrictions or any exception as is normally found in the provisions conferring jurisdiction. The principle of ‘approbate and reprobate’ or the law of election G cannot be applied appropriately to preclude this Court from exercising its jurisdiction under Article 136. [257-B, C]

H 2. The doctrine of election cannot be extended to shut out or preclude a person from invoking the constitutional remedy provided to him under Article 136. It cannot be applied to deprive a person of his statutory right to appeal much less a constitutional right of invoking extraordinary juris-

diction of this Court as he having undertaken to vacate the premises was precluded from exercising his right to approach higher court. It is not exercise of option between two remedies open to him but depriving him of his constitutional right which would be contrary to constitutional guarantee and against law. There is no estoppel against statute. [256-E] A

3. Even the equitable principle of 'approbate and reprobate' cannot be applied. Taking time to vacate is appealing to the court to protect him so that he may make arrangements in the meantime. At the worst the intention might be to gain time to approach the higher court. Grant of time in either case is in the discretion of the court. Its violation may amount to disobedience of the order of the court and the person may be proceeded against in contempt. But no other fetter arises. Otherwise in the system prevalent the tenant may be on the road by the time he is able to approach this Court. This would be rendering the tenant remediless. [256-G-H, 257-A] B C

R.N. Gosai v. Yashpal Dhir, [1992] 4 SCC 683, dissented from. D

Halsbury's Laws of England, 4th Ed.Vol.16 Para 1507, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4587 of 1995.

From the Judgment and Order dated 25.7.94 of the Karnataka High Court in H.R.R.P.No. 780 of 1994. E

Uday Sinha, Bhawanishankar Gadnis and H.A. Raichura for the Appellant.

Gobind Mukhti, R. Jagannath Gowdy and M.K. Dua for the Respondent. F

The following Order of the Court was delivered :

In this tenant's appeal directed against the order dismissing his revision for non-compliance of sub-section (1) of Section 29 of the Karnataka Rent Control Act, 1961, what has been vehemently argued for the landlord is that the appellant having given an undertaking before the High Court that he would vacate the premises within six months, he is precluded from approaching this Court under Article 136 of the Constitution of India. Reliance has been placed on *R.N. Gosain v. Yashpal Dhir*, [1992] 4 SCC H

- A 683 and it is urged that since law does not permit a person to approbate and reprobate and this principle is founded on doctrine of election, this petition is liable to be dismissed on this ground.

- B Election is a defence available affecting property and, 'considers that as done which ought to have been done, *Halsbury Laws of England*, 4th Edition Volume 16 para 1372. It is statutorily recognised by Section 35 of the Transfer of Property Act. It applies where a person professes to transfer property which he has no right to transfer. Similarly, a person may not approbate and reprobate is, 'a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais.
- C The principle that a person may not approbate and reprobate expresses two propositions, (1) that the person in question, having a choice between two courses of conduct, is to be treated as having made an election from which he cannot resile, and (2) that he will not be regarded, in general at any rate, as having so elected unless he has taken a benefit under or arising out of the course of conduct which he has first pursued and with which his subsequent conduct is inconsistent', *Halsbury's Laws of England*, 4th Ed. Vol. 16 para 1507.
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- E None of these principles apply to an undertaking given by a tenant for vacating one premises within specified time. It is not a transfer of property by a person who has no right to transfer. The doctrine of election cannot be applied to deprive a person of his statutory right to appeal much less a constitutional right of invoking extraordinary jurisdiction of this Court as he having undertaken to vacate the premises was precluded from exercising his right to approach higher court. It is not exercise of option
- F between two remedies open to him but depriving him of his constitutional right which would be contrary to constitutional guarantee and against law. There is no estoppel against statute.

- G Even the equitable principle of 'approbate and reprobate' cannot be applied. Taking time to vacate is appealing to the court to protect him so that he may make arrangements in the meantime. At the worst the intention might be to gain time to approach the higher court. Grant of time in either case is in discretion of the court. Its violation may amount to disobedience of the order of court and the person may be proceeded against in contempt. But no other fetter arises. Otherwise in the system prevalent the
- H tenant may be on the road by the time he is able to approach this Court.

This would be rendering the tenant remediless. The equitable principle of estoppel thus cannot act inequitably against tenant. A

Remedy under Article 136 is a constitutional right. It cannot be taken away by legislation much less by invoking principle of election or estoppel. The jurisdiction exercised by this Court under Article 136 is an extraordinary jurisdiction which empowers this Court to grant leave to appeal from any judgment, decree or determination in any cause or matter passed or made by any Court or Tribunal. The scope of this Article has been settled in numerous decisions. It is not hedged with any restrictions or any exception as is normally found in the provisions conferring jurisdiction. The principle of 'approbate and reprobate' or the law of election which is the basis of the decision in *R.N. Gosain's* case (supra) cannot, in our opinion, be applied appropriately to preclude this Court from exercising its jurisdiction under Article 136. The doctrine of election is founded on equitable principle that where a person persuades another one to act in a manner to his prejudice and derives any advantage from that then he cannot turn around and claim that he was not liable to perform his part as it was void. It applies where a vendor or a transferor of property tries to take advantage of his own wrong. This principle cannot, in our opinion, be extended to shut out or preclude a person from invoking the constitutional remedy provided to him under Article 136. The law that there is no estoppel against statute is well settled. Here it is a remedy under the Constitution and no law can be framed much less the principle of election which can stand in the way of the appellant from invoking the constitutional jurisdiction of this Court. The Court may, in the circumstances of the case, refuse to exercise its discretion but he cannot be precluded from invoking the jurisdiction by application of principle of election. For these reasons we have some difficulty in agreeing with the ratio of *R.N. Gosain's* case (supra). We are of the opinion that papers of this appeal may be placed before Hon'ble the Chief Justice of India for directing it to be listed before a larger Bench. B
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The interim order shall continue during pendency of the appeal in this Court. The appellant shall keep on depositing the rent of the premises before the Rent Control Court. G

T.N.A.

To go lifted.