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Before M.L. Singhal, J

RAM KUMAR,—*Petitioner*

*versus*

SHYAM SUNDER,—*Respondent*

C.R. No. 3572 of 2000

13th March, 2001

*Haryana Urban (Control of Rent and Eviction) Act, 1973—S.13—Haryana Panchayati Raj Act, 1994—Property situated within the Municipal limits—Ejectment application under section 13 of the 1973 Act filed—Disputed property becomes subject to the 1994 Act after Haryana Govt. promulgating notification dated 2nd March, 2000—Whether ejectment application pending for the last 9 years can be dismissed as not maintainable—Held, no—Notification dated 2nd March, 2000 does not affect the pending proceedings as it was not retrospective in operation.*

*Held*, that notification dated 2nd March, 2000 cannot be said to be retrospective in operation, and if that notification is given retrospective effect, such interpretation would be contrary to all canons of statutory interpretation and would also tend to defeat the cause of justice and fair play. Plaintiff spent 9 years before the Rent Controller and it would be working injustice to him if now it is said that the Rent Controller has no jurisdiction, though he had jurisdiction when this ejectment application was instituted and plaintiff is directed to approach the civil court for ejectment of respondent under the general law of the land.

(Para 16)

Sumeet Goel, Advocate for the Petitioner

G.S. Gandhi, Advocate, for the Respondent.

### JUDGMENT

*M.L. Singhal, J.*

(1) Shyam Sunder filed application for ejectment of Ram Kumar from a shop situated within the municipal limits of Kalayat town under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act,

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1973 (hereinafter to be referred as the Haryana Rent Act, 1973) in January, 1992. During the pendency of the ejection application, the Government of Haryana promulgated notification in its official gazette, dated 2nd March, 2000 whereby "Kalayat town" ceased to be a municipal town and it became the subject of the Haryana Panchayati Raj Act, 1994 (being a Gram Panchayat).

(2) Looking to this notification, Ram Kumar made an application whereby he prayed for the dismissal of this ejection petition saying that with the promulgation of that notification, "Kalayat town" has ceased to be a municipal town and as such this shop is no longer subject to the provisions of the Haryana Rent Act, 1973. Ejection application is not cognizable by the Rent Controller and as such this ejection application cannot proceed further before the Rent Controller and it be dismissed and remedy of Shyam Sunder is to file suit for ejection before the Civil Court under the general law of the land.

(3) *vide* order dated 17th August, 2000, this application was declined by the Rent Controller, Kaithal (though she has described herself to be Civil Judge (Jr. Division), Kaithal.

(4) Aggrieved from this order dated 17th August, 2000, Ram Kumar (tenant) has come up in revision to this Court.

(5) I have heard the learned counsel for the parties and have gone through the record.

(6) It was submitted by the learned counsel for the petitioner that at the time, when the ejection application was filed, the shop was situated within the municipal limits of "Kalayat town" and it was subject to the provisions of the Haryana Rent Act, 1973 and cognizable by the Rent Controller, but in view of the notification dated 2nd March, 2000, promulgated by the Government of Haryana, the shop in question no longer remains subject to the provisions of the Haryana Rent Act, 1973 as "Kalayat town" has ceased to be a municipal town but had become a Gram Panchayat subject to the provisions of the Haryana Panchayati Raj Act, 1994. It was submitted that the ejection application has ceased to be maintainable before the Rent Controller in view of the said notification and as such it should have been dismissed as not maintainable.

(7) It was submitted by the learned counsel for the petitioner that how could the Rent Controller be said to have possessed of

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jurisdiction for throwing him out of the shop when his jurisdiction had come to an end in view of that notification. It was submitted that the jurisdiction of the Rent Controller to try this ejection application should have been alive right up to the day of its decision and when before the day of its decision, he had ceased to possess the necessary jurisdiction, it ought to have been dismissed as not maintainable. It was submitted that no proceedings could be continued before the Rent Controller when there was cessation of the very applicability of the provisions of the Haryana Rent Act, 1973 over this shop. It was submitted that on the date of decision, no order at all can be passed by the Rent Controller, which could be said to be valid and legal.

(8) Learned counsel for the respondent, on the other hand submitted that notification dated 2nd March, 2000 shall not affect the pending proceedings as it was only prospective in operation and it was not retrospective in operation. It was submitted that "Kalayat town" ceased to be a municipal town only with effect from the date of its promulgation as notified in the official gazette of the State of Haryana. In support of his submission, he drew my attention to *Gram Panchayat Deh Mauza Gharhi Brahman Tehsil Sonapat vs Kesho Narain and Others (1)*, where it was held that the provision contained in S. 13 of the Punjab Act, 18 of 1961, which takes away the jurisdiction of the Civil Courts over any matter arising out of the operation of that Act cannot be considered to be a mere matter of procedure so as to operate retrospectively. Where a suit has been instituted in a Civil Court at a time when that Court was fully competent to entertain the suit (i.e. before the Punjab Act 18 of 1961 had come into force) and that suit is pending at the date the Act comes into force, the Act cannot without express words or necessary intendment, divest the Court of the jurisdiction which it exercised at the time of entertaining the suit, so as to *undo* the entire proceedings held by the Civil Court up to the date of the amendment. Such a construction would be contrary to all canons of statutory interpretation and would also tend to defeat the cause of justice and fair play.

(9) Learned counsel also drew my attention to *The Punjab State vs. K.L. Grover and others (2)*, where in a suit for ejection of tenant which was filed before the expiry of five years of the completion of the construction of the building before a Civil Court (It may be mentioned here there is a notification in the State of Punjab exempting the

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(1) AIR 1964 Punjab 464

(2) 1984 PLR 179

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buildings constructed for a period of 5 years of its completion from the provisions of the East Punjab Urban Rent Restriction, Act), decree for ejection was passed after the expiry of 5 years period, it was held that decree can well be executed.

(10) In *Firm Amar Nath vs. Tek Chand* (3), it was observed that where the building was completed in March, 1960 and the suit was filed on 14th January, 1963, that is, before the expiry of 5 years from the date of the completion of the building but the decree was passed on 14th August, 1969 i.e. after the period of exemption, exemption from section 13 was available to the landlord-decree holder and the decree was executable.

(11) He drew my attention to *R. Rajagopal Reddy vs. P. Chandrasekharan* (4), where it was held that Section 4(1) of the Act cannot be applied to suit, claim or action to enforce any right in property held *benami* against person in whose name such property is held or any other person, if such proceeding is initiated by or on behalf of a person claiming to be real owner thereof, prior to the coming into force of Section 4(1) of Act. So far as Section 4(2) is concerned, all that is provided is that if a suit is filed by a plaintiff who claims to be the owner of the property under the document in his favour and holds the property in his name, once Section 4(2) applies no defence will be permitted or allowed, in any such suit, claim or action by or on behalf of a person claiming to be the real owner of such property held *benami*. The disallowing of such a defence which earlier was available, itself, suggests that a new liability or restriction is imposed by Section 4(2) on a pre-existing right and such a provision cannot be said to be retrospective or retroactive by necessary implication. It is also pertinent to note that Section 4(2) does not expressly seek to apply retrospectively. So far as such a suit which is covered by the sweep of Section 4(2) is concerned, the prohibition of Section 4(1) cannot apply to it as is not a claim or action filed by the plaintiff to enforce right in respect of any property held *benami*. On the contrary, it is a suit, claim or action flowing from the sale deed or title deed in the name of the plaintiff. Even though such a suit might have been filed prior to 19th May, 1988, if before the stage of filing of defence by the real owner is reached. Section 4(2) becomes operative from 19th May, 1988, then such a defence as laid down by Section 4(2) will not be allowed to such a defendant. However, that would mean that Sections 4(1) and 4(2) only on that score can be treated to be impliedly retrospective so as to cover

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(3) AIR 1972 SC 1548

(4) AIR 1996 SC 238

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all the pending litigations in connection with enforcement of such rights or real owners who are parties to *benami* transactions entered into prior to the coming into operation of the Act and specially Section 4 thereof.

(12) The preamble of the Act itself states that it is an act to prohibit *benami* transactions and the right to recover property held *benami*, for matters connected therewith or incidental thereto. Thus it was enacted to efface the then existing rights of the real owners of property held by others *benami*. Such an act was not given any retrospective effect by the legislature. Section 4 is not retrospective. A mere look at the provisions of sub-section of S.3 also shows that the prohibition under Section 3(1) is against persons who are to enter into *benami* transactions and if it has laid down that no person shall enter into any *benami* transaction which obviously means from the date on which this prohibition comes into operation i.e. with effect from 5th September, 1988. That takes care of future *benami* transactions. Sub-section (3) of Section 3 also throws light on this aspect. It states that whoever enters into any *benami* transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. Therefore, the provision creates a new offence of entering into such *benami* transactions. It is made not-cognizable and bailable as laid down under sub-section (4). It is obvious that when a statutory provision creates a new liability and new offence, it would naturally have prospective operation and would cover only those offences which take place after Section 3(1) comes into operation.

(13) In essence what was held by the Hon'ble Supreme Court in *R. Rajagopal Reddy's case* (supra) is that *benami* Transactions (Prohibition) Act, 1988 is not retrospective in operation. The *benami* transaction that took place before the enforcement of the *Benami* Transactions (Prohibition) Act (45 of 1988) can well be shown to be *benami*.

(14) If "A" purchases property in the name of "B" and not in his own name after the promulgation of this Act, "B" will be viewed as absolute owner of the property and it will not be open to "A" to say that he is the real owner of the property and "B" was only a *benamidar* but if this sale took place prior to the enforcement of this Act, it would be open to "A" to prove that he is the real owner of the property and "B" was only a *benamidar*.

(15) On the strength of these authorities, learned counsel for the respondent submitted that notification dated 2nd March, 2000 was not retrospective in operation but was only prospective in operation.

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Kalayath ceased to be a municipal town right when the said notification was promulgated in its official gazette by the State of Haryana.

(16) The said notification cannot be said to be retrospective in operation, as if that notification is given retrospective effect, such interpretation would be contrary to all canons of statutory interpretation and would also tend to defeat the cause of justice and fair play, Plaintiff Shyam Sunder spent 9 years before the Rent Controller and it would be working injustice to him if now it is said that the Rent Controller has no jurisdiction, though he had jurisdiction when this ejection application was instituted and Shyam Sunder is directed to approach the Civil Court for ejection of Ram Kumar under the general law of the land.

(18) So, this revision fails and is dismissed.

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**S.C.K**

Before Jawahar Lal Gupta and N.K. Sud, JJ.

SANJEET SINGH GREWAL AND OTHERS,—*Petitioners*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 16738 of 2000

28th March, 2001

*Constitution of India, 1950—Art. 226—Land Acquisition Act, 1894—Ss. 4 and 5-A—Punjab Regional and Town Planning and Development Act, 1995—Ss. 14, 15 and 56 to 78—Punjab New Capital (Periphery) Control Act, 1952—Ss. 5, 10 and 11—Punjab Regional and Town Planning and Development (General) Rules, 1995—Rl.22—State Government issuing notifications u/s 4 of the 1894 Act for acquisition of land—Land sought to be acquired for setting up a new town, Anandgarh—Promulgation of the 1995 Act by the Legislature—Aims and objects—1995 Act enacted to achieve the object of setting up a high powered Board consisting of experts in the fields of housing, engineering and town planning etc. to guide and direct the Administration in the process of urbanisation—U/s 15, the Board can associate any person whose advice it may require in performing its functions—State Government constituting a Board under the 1995*