A

IDUL HASAN & ORS.

v.

RAJINDRA KUMAR JAIN

SEPTEMBER 1, 1989

B [SABYASACHI MUKHARJI AND B.C. RAY, JJ.]

U.P. (Temporary) Control of Rent and Eviction Act, 1947—Section 3(1)(c)—Eviction challenged.

U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972—Effect of repeal—Vis-a-vis the rights of the parties.

C

The appellants are the tenants of premises situated in the District of Bijnor. The suit for their eviction was filed in 1967 on the ground that they (tenants) had made material alteration in the property and as such were liable for ejectment under section 3(1)(c) of the U.P. (Temporary)

D **Control of Rent and Eviction Act 1947. The appellants did not dispute the constructions in the demised premises, but asserted that the constructions in question had been made with a view to save the building from rain-water and fire and the constructions were not such which would render them liable for eviction as contemplated under section 3 of the Act of 1947. The appellants also pleaded that the constructions**

E **were effected with the permission of the landlord. The learned Munsif, who tried the suit held that the constructions had been made by the tenants appellants without the consent/knowledge of the landlord and that the constructions amounted to "material alterations". He accordingly decreed the landlord's suit. The First Appellate Court, which is the Civil Judge affirmed the decree of eviction by his order dated 16th**

F **Feb. 1984.**

Thereupon the appellants went in second appeal before the High Court. The High Court too dismissed the appeal. It found that the constructions have been made by demolishing the old structures, by conversion of six Kuchha Kothas into pucca ones and an entirely new

G **constructions had come up in their place. It further found that the accommodation had been increased by enclosing the open space which must have been possible only by raising walls etc. In any case, according to the finding of the High Court, the property looked different from what originally it was. Thus the alterations made by the appellants were material alterations and as such came within the mischief of section**

H **3(1)(c) of the Act 1947.**

Hence this appeal by the appellants-tenants.

Dismissing the appeal, this Court,

HELD: Under Section 3(1)(c) of the Act it is apparent that the grounds for eviction could be either such construction which materially altered the accommodation or alternatively is likely to substantially diminish its value. These are the disjunctive requirements. In the facts and circumstances of the instant appeal, all the Courts have found that constructions carried out by the tenants have the effect of altering the form and structure of the accommodation. [12B-C; F]

The suit which was filed on the ground that there were material alterations simpliciter under section 3(1)(c) of the Act of 1947 would continue to be valid after the coming into operation of Act of 1972 in view of clause (s) of Sub-section (2) of section 43 thereof. This is the consequence of the language used. Neither the Act of 1947, nor the Act of 1972 gives any right to the landlord. The landlord's right to evict tenant is guided by the Transfer of Property Act. The Act of 1947 gives protection to the tenants under certain conditions and at the time when the suit was filed, the rights of the parties had been crystallised. On the facts as alleged and proved and found by the Court, the tenants were liable to be evicted. The question of temporary rights in favour of the landlord does not arise. [14H; 15A-C]

The rights of the parties must be determined in accordance with the provisions of law. What justice of the case entails and what is just, due and the law says, is to be given to each one whether being a landlord or a tenant. "The Judge is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness" (Cardozo-The Nature of the Judicial process page 141). If that is the position on the date when the rights crystallised and in view of clause (s) of section 43 (2) of the Act of 1972, those rights will continue as if they were under the old Act. The right had accrued to the landlord to get the eviction even if the alteration had not in any way affected or diminished the value of the premises. That right cannot be deprived. [15D-F]

Considering the fact that the tenants are poor and in possession since long, the Court directed that the tenants will not be evicted until 30th September 1990 provided the tenants give the usual undertaking containing the usual terms stating, *inter alia,* that they are in possession, within four weeks of this date. The undertaking must be given by

each of the appellants. In default of filing of undertaking, the decree will be executable forthwith. [15H; 16A]

The Court further observed that in view of the condition of the tenants, if an application is made for allotment of any other area by these parties to the appropriate authority, and if the appellants are not in possession or occupation of other property, such authority should consider the feasibility to give them fresh allotment of some other property. [16B]

Babu Manmohan Das Shah & Ors. **v.** *Bishun Das,* **[1967] 1 SCR 836 and** *Qudrat Ullah* **v.** *Municipal Board, Bareilly,* **[1974] 2 SCR 530, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 408 of 1980.

From the Judgment and Order dated 21.12.79 of the Allahabad High Court in Second Appeal No. 1235 of 1974.

Mrs. S. Swaran Mahajan and Arun Madan for the Appellants.

S.K. Mehta for the Respondent.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is a tenants' appeal by special leave from the judgment and order of the High Court of Allahabad. The question involved in this appeal, as is usual, in all these cases, is what is just in the circumstances and events that have happened.

The premises in question is in the village and P.O. Dhampur in the District of Bijnor in the State of Uttar Pradesh. The suit was filed in 1967. The suit for the eviction of the appellants was filed on the ground that tenants had made material alteration in the property and as such became liable for ejectment in view of s. 3(1)(c) of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter referred to as 'the Act of 1947'). The said section 3 in the said provision enjoins that no suit without the permission of the District Magistrate shall be filed in any civil court against a tenant for his eviction from any accommodation, except on one or more of the grounds enumerated therein and clause (c) of sub-section (1) of section 3 was as follows:

"that the tenant has, without the permission in writing of the landlord, made or permitted to be made any such construction as, in the opinion of the court, has materially altered the accommodation or is likely substantially to diminish its value;" A

It appears that the constructions on the basis of which eviction of the tenants was claimed were not in dispute and were not disputed at any stage. These were (i) that the tenants have placed a khaprail in place of khasposh; (ii) Kuchha kothas had been converted into pucca ones which were six in number; (iii) an open place had been enclosed and included in the accommodation in question. The action was contested. It was asserted by the tenants that these constructions had been made in order to save the buildings from rain-water and fire and that these constructions were not such as would make the tenants liable for ejectment within the meaning of s. 3 of the Act of 1947. It was further contended that these constructions had been made with the knowledge and consent of the landlord. The learned trial Judge, which in this case was the court of learned Munsif at Nagina, by its order dated 17th December, 1968 and the first Appellate Court, which is the Civil Judge, by its order dated 16th February, 1984 have found that the constructions had been made by the tenants without the consent and knowledge of the landlord and that the constructions in question amounted to "material alterations". On these grounds, the landlord's suit was decreed and the appeal by the tenants was dismissed. B C D E

The tenants went in second appeal before the High Court. The High Court found that these alterations had been made, namely, the conversion of six kuchha kothas into pucca one and this was done after demolition of the old constructions. After the old construction had ceased to exist, entirely new constructions had come up in their place. This, according to the High Court, came within the meaning of structural alterations in the building. The High Court further found that the accommodation had been increased by enclosing the nearby open space and that again must have been done by raising walls either connecting the various kothas or in some other way. In either case, the High Court found, the shape and the extent and preparation of the accommodation had been increased and was thereafter different than what it was before. In those circumstances, the High Court came to the conclusion that the alterations admittedly made by the tenants were "material alterations" and as such came within the mischief of s. 3(1)(c) of the Act of 1947. In the aforesaid view of the matter, the High Court dismissed the second appeal and granted two months' time F G H

A to the tenants to vacate. The judgment and the order of the High Court was passed on 21st December, 1979. Leave was granted by this Court under Article 136 of the Constitution on 18th February, 1990. Since then, this appeal is before this Court.

As mentioned hereinbefore, the action was instituted under the B aforesaid Act of 1947, which was the temporary Act. We have set out the relevant provisions of the Act. It is apparent from the said provisions that the ground for eviction could be either such construction which materially altered the accommodation or in the alternative is likely to substantially diminish its value. These are the disjunctive requirements. This Court had occasion to construe s. 3(1)(c) of the C Act of 1947 in *Babu Manmohan Das Shah & Ors.* v. *Bishun Das,* [1967] 1 SCR 836 and was confronted with the question whether the landlord was entitled to evict the tenant if the alterations were material alterations only or whether proof was also necessary of the diminished value of the property as a result of such alteration. This Court had also occasion to consider what amounted to 'material alterations' under the D said Act. This Court noted that the language of the clause (c) of s. 3(1) of the Act of 1947 made it clear that the legislature wanted to lay down two alternatives which would furnish ground to the landlord to sue without the District Magistrate's permission, that is, where the tenant has made such construction which would materially alter the accommodation or which would be likely to substantially diminish its value. E Therefore, these are disjunctive or alterative requirements. This Court further held that although no general definition can be given of what "material alterations" mean, as such a question would depend on the facts and circumstances of each case, the alterations in that case amounted to "material alterations" as the construction carried out by the tenant had the effect of altering the form and structure of the F accommodation. In the facts and circumstances of the instant appeal before us, all the courts have accordingly found that construction carried out by the tenants have the effect of altering the form and structure of the accommodation.

In view of the contentions urged by Mrs. Swaran Mahajan, it has G to be borne in mind that the trial court passed its order on 17th December, 1968 well before the time when the Act of 1972 being the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (13 of 1972) (hereinafter referred to as 'the Act of 1972') came into force. The said Act came into force on 20th September, 1972. The rights of the parties have crystallised after the institution of the suit H which was during the continuance of Act of 1947, and before the Act

of 1972. The appellants in this appeal could not dispute that there were material alterations. It could not also be disputed before us by Mrs. Mahajan counsel on behalf of the tenants that under the law as it stood and the law as explained in *Babu Manmohan Das Shah's* case (supra), it was not necessary at that time to further prove that the alteration has or is likely to diminish the value of the property. But what Mrs. Mahajan has sought to canvass before us is that under s. 20(2)(c) of the Act of 1972, the ground is that the tenant has without the permission in writing of the landlord made or permitted to be made any such construction or structural alteration in the building as is likely to diminish its value or utility or to disfigure it. Mrs. Mahajan therefore contends that now to make the tenants liable to be evicted it is necessary to allege and prove not only that construction has resulted in material alteration in the building but also that such construction is likely to diminish either the value or the utility of the building or disfigure it. In this case, according to counsel for the appellants, that being in the possession, the eviction cannot any longer be sustained. She drew our attention to s. 20(2)(c) of the Act of 1972. She relied on the observations of this Court in *Qudrat Ullah* v. *Municipal Board, Bareilly,* [1974] 2 SCR 530. In that case, this Court had to deal with the Act of 1947 as well as Act of 1972. Krishna Iyer, J. speaking for this Court observed that the general principle regarding the consequence of repeal of a statute is that the enactment which is repealed is to be treated, except as to transactions past and closed, as if it had never existed. The operation of this principle is subject to any savings which may be made expressly or by implication by the repealing enactment. If the repealing enactment makes a special provision regarding pending or past transactions it is this provision that will determine whether the liability arising under the repealed enactment survives or is extinguished. Section 6 of the Uttar Pradesh General Clauses Act, 1904 applies generally in the absence of a special saving provision in the repealing statute. It was further observed that where a repeal is followed by a fresh legislation on the subject, the Court has to look to the provisions of the new Act to see whether they indicate a different intention. Krishna Iyer, J. further observed in that case that Sec. 43(2)(h) of the Act of 1972 makes it clear that even if the power for recovery of possession be one under the earlier Rent Control Law, the later Act will apply and necessary amendments in the pleadings can be made. This indicates that it is the later Act which must govern pending proceedings for recovery of possesion or recovery or fixation of rent. In that case, the suit was not even one under the Act but proceeded on the footing that the contractor was only a licensee and so none of the savings clauses in s. 43(2) applied. The provision relating to effect of

A B C D E F G H

repeal under U.P. General Clauses Act was set out at p. 539 of the report. S. 43(2) of the Act of 1972 is, therefore, relevant. Sub-section (1) of S. 43 of the Act of 1972 lays down that Act of 1947 is hereby repealed. Sub-section (2) makes provision for pending proceedings in different clauses. Clause (h) of Sub-section (2) provides as follows:

> "any court or authority before which any suit or other proceeding relating to the recovery or determination or fixation of rent of, or eviction from, any building is pending immediately before the commencement of this Act may, on an application being made to it within sixty days from such commencement, grant leave to any party to amend its pleading in consequence of the provisions of this Act;"

This clause was the subject-matter of construction in the decision of this Court in *Qudrat Ullah's,* case (supra). Referring to the said clause, Mr. Justice Krishna Iyer observed at p. 540 of the report that it is clear that even if the statute for recovery of possession be one under the earlier Rent Control Law, the later Act will apply and necessary amendments in the pleadings can be made. This definitely indicates, according to that decision, that it is the later Act that must govern pending proceedings for recovery of possession or recovery or fixation of rent. But these observations made therein would not help Mrs. Mahajan, as contended by Mr. Mehta that the rights of the parties have crystallised before the coming into operation of the 1972 Act, and vested rights of the landlord had not been divested by clause (h) of s. 43(2) of the Act of 1972. On the other hand, s. 43(2)(s) saves the right that have accrued in favour of the landlord. The said clause (s) reads as follows:

> " any suit for the eviction of a tenant instituted on any ground mentioned in sub-section (1) of s. 3 of the old Act, or any proceeding out of such suit (including any proceeding for the execution of a decree passed on the basis of any agreement, compromise or satisfaction), pending immediately before the commencement of this Act, may be continued and concluded in accordance with the old Act which shall, for that purpose, be deemed to continue to be in force;"

Therefore, the suit which was filed on the ground that there was material alterations simplicitor under s. 3(1)(c) of the Act of 1947 would continue to be valid after the coming into operation of Act of

1972 in view of clause (s) of sub-section (2) of section 43 thereof. That is the consequence of the language used. The observations of this Court in *Qudrat Ullah's,* case (supra) do not in any way suggest to the contrary. Mrs. Mahajan tried to urged that the Act of 1947 was a temporary Act. Therefore, it could not create any right in favour of the landlord after the expiry of the time. This argument is under a misconception. Neither the Act of 1947 nor the Act of 1972 gives any right to the landlord. The landlord's right to evict tenant is guided by the Transfer of Property Act. The Act of 1947 gives protection to the tenants under certain conditions and at the time when the suit was filed, the rights of the parties had been crystallised. On the facts as alleged and proved and found by the Court, the tenants were liable to be evicted. The question of temporary rights in favour of the landlord does not arise. Mrs. Mahajan further submitted that the new provisions of the Act should enlighten us to determine what is just in this case. She submitted that it will be unjust in the facts and the circumstances of the case to permit eviction of the tenants on the ground of constructions which do not in any way alter or diminish the value of the premises in question. She, on the other hand pleaded that the constructions made have improved the building. Therefore, instead of being liable to be evicted, the tenants should be protected. These are, of course, submissions not sustainable in law. The rights of the parties must be determined in accordance with the provisions of law. What justice of the case entails, and what is just, due and the law says, is to be given to each one whether being a landlord or a tenant. "The Judge is not to innovate at pleasure. He is not a knigh-errant roaming at will in pursuit of his own ideal of beauty or of goodness."—Cardozo (The Nature of the Judicial Process, page 141). If that is the position on the date when the rights crystallised and in view of sub-section (s) of section 43(2) of the Act of 1972, those rights will continue as if they were under the old Act. The right had accrued to the landlord to get the eviction even if the alteration had not in any way affected or diminished the value of the premises. That right cannot be deprived. But justice also consists in balancing the rights of the parties. The tenants in this case, it is said, are poor. There was nothing to dispute this submission. It is further said that these have been there for a long time.

In the aforesaid view of the matter, we dismiss the appeal but we direct that the tenants will not be evicted until 30th September, 1990 provided the tenants give the usual undertaking containing the usual terms and stating, *inter alia,* that they are in possession, within four weeks of this date. The undertaking must be given by each of the

A appellants. In default of filing undertaking, the decree will be executable forthwith.

We must further observe that in view of the condition of the tenants if an application is made for allotment of any other area by these parties to the appropriate authority, and if the appellants are not B in possession or occupation of other property, such authority should consider the feasibility of giving them fresh allotment of some other property. The appeal is, therefore, dismissed. In the facts and the circumstances of the case, the parties will bear and pay their own costs.

Y. Lal Appeal dismissed.