MUKUNDA MURARI CHAKRAVARTI AND OTHERS

v.

PABITRAMOY GHOSH AND OTHERS

1944

Nov. 8, 13.

[SIR PATRICK SPENS C.J., SIR SRINIVASA VARADACHARIAR and SIR MUHAMMAD ZAFRULLA KHAN JJ.]

Bengal Non-Agricultural Tenancy (Temporary Provisions) Act (IX of 1940), s. 3—Government of India Act, 1935, s. 107 (1) ; *Schedule VII, List II, entries Nos.* 2, 21; *List III, entry No.* 4—*Civil Procedure Code,* 1908, *s.* 4 (1), *O. XXI, r.* 24—*Provision in Provincial Act for staying proceedings for ejectment of non-agricultural tenants—Whether repugnant to Civil Procedure Code—Validity—"Tenant," meaning of.*

The Bengal Non-Agricultural Tenancy (Temporary Provisions) Act (Bengal Act IX of 1940) provided, *inter alia,* that notwithstanding anything contained in any other law for the time being in force, every suit and proceeding in any court for ejectment of a non-agricultural tenant, other than a suit or proceeding for ejectment on account of the non-payment of rent by such tenant, shall be stayed for the period during which the Act was in force. The validity of this Act was impugned on the ground that its provisions were repugnant to the provisions of the Civil Procedure Code relating to execution of decrees and that to the extent of the repugnancy, the Act was void under s. 107 (1) of the Constitution Act. The High Court of Calcutta upheld the validity of the Act on the ground (i) that the Act was covered by entries Nos. 2 and 21 of List II of the Seventh Schedule to the Constitution Act and s. 107 had therefore no application, and (ii) that, even if the Act should be held to fall under entry No. 4 of List III, its operation was saved by s. 4 (1) of the Civil Procedure Code :—

Held, that, assuming that the impugned Act was legislation in respect of civil procedure and was covered by entry No. 4 of List III, its provisions were not void as being repugnant to O. XXI, r. 24, of the Civil Procedure Code, inasmuch as s. 4 (1) of the Code saves special powers conferred by or under any other law for the time being in force.

Held also, that the word "tenant" is used in Bengal Act IX of 1940 in the popular sense, that is, of a person who was a tenant before the decree in ejectment was sought or obtained against him.

Appeal from a judgment of the High Court of Judicature at Calcutta. Case No. XXVI of 1943.

The material facts appear from the judgment. The Bengal Non-Agricultural Tenancy (Temporary Provisions) Act (IX of 1950) was passed by the Bengal

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Legislature and was assented to by the Governor of Bengal on the 30th May, 1940. It was to continue in force for two years. Section 3 of the Act, the validity of which was impugned in this case, ran as follows :—

"Notwithstanding anything contained in any other law for the time being in force, every suit and proceeding in any Court for ejectment of a non-agricultural tenant, other than a suit or proceeding for ejectment on account of the non-payment of rent by such tenant, shall be stayed for the period during which this Act continues in force :

"Provided that every proceeding for delivery of possession in execution of a decree for ejectment on account of the non-payment of rent by such tenant shall be stayed if, within thirty days from the date of the decree, such tenant deposits into Court the amount of the decree together with the costs of the proceeding."

1944. Nov. 8. *Sardar Raghbir Singh* for the appellants. Section 3 of the impugned Act deals with "civil procedure" and is covered by entry No. 4 of List III. It is repugnant to the provisions of O. XXI, r. 24, of the Civil Procedure Code and, as the consent of the Governor-General was not obtained, the Act is void under s. 107 (1) of the Constitution Act to the extent of the repugnancy. The view of the Calcutta High Court that the subject-matter of the Act falls within entry No. 2 of List II ("jurisdiction and powers of courts......and procedure in Rent and Revenue Courts") and entry No. 21 of List II ("land....including the relation of landlord and tenant") is erroneous. Entry No. 2 deals only with procedure in Rent and Revenue Courts. This entry itself distinguishes between jurisdiction and procedure. Procedure in civil courts is governed by entry No. 4 of List III. The Bengal Act does not deal with the "powers of the courts" but only provides for the procedure to be followed in exercising their powers. [Advocate-General of India referred to *Megh Raj* v. *Allah Rakhia* (1).] Section 4 of the Civil Procedure Code cannot override O. XXI, r. 24, of the Code. It is not intended to provide for conflicts like the present. The

1 [1942] F. C. R. 53.

conditions prevailing in Australia and Canada do not prevail in India and the cases referred to in *Megh Raj* v. *Alla Rakhia* ([1]) are not applicable to India.

Sir Brojendra Mitter, Advocate-General of India, (*K. K. Raizada* with him) for the Province of Bengal. The case is covered by the decision of this Court in *Megh Raj* v. *Allah Rakhia* ([1]). The reasons advanced by the Calcutta High Court in support of the view that they have taken are sound.

S. N. Mukerjee for the respondents adopted the arguments of Sir Brojendra Mitter.

Cur. adv. vult.

Nov. 13. The judgment of the Court was delivered by

SPENS C. J.—Some of the appellants and the predecessors-in-title of the other appellants obtained a decree in ejectment against the respondents, on the 8th February 1940; and it was confirmed on appeal on the 15th May 1940. When the decree-holders applied for execution of this decree, on the 4th June 1940, the defendants filed an application asking for stay of proceedings in terms of s. 3 of the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act (Bengal Act IX of 1940) which had come into force on the 30th May 1940. The decree-holders contended that this Act was *ultra vires* and inoperative; but this contention was overruled by the lower courts as well as by the High Court at Calcutta. Against this decision of the High Court this appeal has been preferred.

The reasons for the decision pronounced by the High Court in this case will be found in an earlier judgment of a Special Bench of that Court [*Shrimati Sukumari Debi* v. *Rajdhari Pandey* ([2])]. The operativeness of the Bengal Act which did not receive the consent of the Governor-General was impugned on the ground that some of its provisions (including s. 3) were repugnant to the provisions of the Civil Procedure Code relating to execution of decrees and that to the extent of such repugnancy the Bengal Act was void under

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s. 107 (1) of the Government of India Act. This contention was met by the High Court by two answers: (1) that the Bengal Act was covered by entries Nos. 2 and 21 of List II of the Seventh Schedule to the Constitution Act and that therefore s. 107 had no application to the case ; and (2) that even if, as contended, the Act should be held to fall under entry 4 of List III, its operation was saved by s. 4(1) of the Civil Procedure Code. Both these grounds have been challenged before us on behalf of the appellants. In the view we take on the second ground, it is unnecessary to express any opinion on the first.

Assuming that the impugned Act is legislation in respect of "civil procedure" (entry 4 in List III), s. 107 (1) only enacts that the existing Indian law, *viz.*, the Civil Procedure Code, shall prevail as against the provincial legislation and that the provincial law shall be void to the extent to which any of its provisions are repugnant to any provisions of the Civil Procedure Code. It is contended on behalf of the appellants that s. 3 of the impugned Act, in so far as it directs that all proceedings for ejectment even in execution of decrees shall be stayed for a number of years, is repugnant to O. XXI, r. 24, of the Civil Procedure Code which directs that the Court shall issue its process for the execution of the decree once the prescribed preliminary measures have been taken. But this rule of the Code must be read subject to s. 4(1) which saves any special power conferred by or under any other law for the time being in force. When it is so read, no question of repugnancy between the Civil Procedure Code and the impugned Act will arise—see *Megh Raj* v. *Allah Rakhia* ([1]).

It was faintly argued that even on the terms of s. 3 of the Bengal Act, the order of the Courts below was not justified, as the section is limited to proceedings against a "tenant" and a person against whom a decree in ejectment had been passed could no longer be spoken of as a tenant. As pointed out by the High Court, it is clear from the tenor of the section that the word "tenant" is there used in the popular sense, that is of

[1] [1942] F. C. R. 53 at pp. 58-59.