SUPREME COURT.

†S.C. 1949

June 15.

TAI CHUAN & CO. (APPELLANTS)

v.

CHAN SENG CHEONG (RESPONDENT). *

Interpretation of Statutes—S. 5, General Clauses Act—Urban Rent Control Act, 1946—Amending Act XIV and XXVI of 1947—Urban Rent Control Act, ss. II (1) (f), II (c), 12 and 14 (3).

Held: That general principle is that when the law is altered during the pendency of an action, the rights of the party are decided according to the law as it existed when the action was taken unless the new statute shows clear intention to vary such right but an exception to this general principle is that even though the Act is silent as to whether or not it should operate retrospectively, if it deals with the procedure or remedies it always operate retrospectively. The provisions of Urban Rent Control Act are retrospective and applies to pending suits.

To remedy a glaring instance of injustice to the owner the Urban Rent Control Act was amended by the introduction of s. II (*1*) (*f*). It deals with questions of relief to the landlord and applies to pending suits. Such relief to landlord under s. II (*1*) (*f*) can be granted even when the decree has been passed before the introduction of the amending Act and no separate suit is necessary.

Quilter v. *Mapleson*, (1881-82) 9 (Q.B.) 672; *In re A Debtor*, (1936) 1 Ch. 237 at p. 242; Maxwell's Interpretation of Statutes, 8th edn., 195 ; Craie's Interpretation of Statutes, 4th edn., 314, followed.

Leong for the appellants.

Thein Maung for the respondent.

The judgment of the Court was delivered by

SIR BA U, C.J.—This appeal is by special leave granted under section 6 of Union Judiciary Act. The point of law that arises is—how the rights of the parties to a suit or proceeding are to be decided when there is a change in the law during the pendency of the suit or proceeding.

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* Civil Appeal No. 8 of 1948.

† *Present* : SIR BA U Chief Justice of the Union of Burma, MR. JUSTICE KYAW MYINT and MR. JUSTICE SAN MAUNG.

S.C. 1949

TAI CHUAN & Co. v. CHAN SENG CHEONG.

The facts of the case are these. Respondent Chan Seng Cheong is the owner of a building known as No. 368, Strand Road, Rangoon, and a godown just behind it. He let these two premises to the appellant company some time before August 1946. On the 2nd August 1946 the respondent served the appellant company with a notice to quit by the end of August 1946. The appellant company refused to do so. Thereupon the respondent filed two suits under section 17 of the City Civil Court Act—one in respect of the premises known as No. 368, Strand Road, and the other in respect of the godown,—for ejectment of the appellant company therefrom. Both the suits were filed on the 4th September 1946 and orders for ejectment were passed in both cases on the 10th January 1947 ; but the appellant company was given time to stay on on the premises till the 10th April 1947 on condition that the appellant company paid the respondent, within one month from the date of the orders, all arrears due for the use and occupation of the premises. The arrears were duly paid. Before the orders for ejectment were passed but after the institution of the suit the Urban Rent Control Act came into force. It came into force on the 19th October 1946. Under sub-section (*1*) of section 14 of the said Act the Court had power to adjourn an application for recovery of possession of or ejectment from any premises ; or if it did not choose to do so, to proceed with the hearing of the application and then at the time of passing an order or decree for ejectment or for recovery of possession it had power to stay the execution thereof for such period as the Court thought fit subject to any conditions in regard to payment of arrears of rent or mesne profits by the person against whom the application or order or decree had been made. If the conditions thus imposed were complied with, then

S.C. 1949

TAI CHUAN & Co. v. CHAN SENG CHEONG.

the Court, if it chose to do so, might discharge or rescind the order or decree. The Court had however no power to do any of the kinds mentioned above in cases where the tenant had failed to satisfy a decree for rent passed by a Civil Court in respect of any period before the date of resumption of civil government on the conclusion of the hostilities with Japan and in cases where any person permitted under section 12 of the Act to occupy any premises or any person living with him had been guilty of conduct which was a nuisance or annoyance to his neighbours or been convicted for using the premises for illegal or immoral purposes and in cases where the condition of the premises had deteriorated owing to acts of waste or neglect committed by any such person.

As the Act came into force during the pendency of the suit the learned Chief Judge of the City Civil Court apparently took advantage of sub-section (*1*) of section 14 and allowed the stay of the execution of the order of ejectment till the 10th April 1947. On the 3rd April 1947 the appellant company filled an application for rescission of the order of ejectment under section 14 (*1*) of the Act on the ground that he had complied with the conditions imposed by the Court. By that time the Urban Rent Control Act was amended by two Amending Acts, namely, Acts Nos. XIV and XXVI of 1947. Both the Amending Acts were curiously enough passed on the same day, that is the 18th March 1947. Section 14 of the Act was considerably amended. Though the appellant company filed its application for rescission of the order of ejectment apparently under section 14 (*1*) before its amendment, yet the learned Chief Judge of the City Civil Court considered the application with reference to the new provisions as contained in the 1st Amending Act, Act XIV of 1947. The learned Chief Judge, however, made no reference

to the provisions of section 14 as contained in the 2nd Amending Act, Act XXVI of 1947. In dealing with the 1st Amending Act the learned Chief Judge observed :

"The principles that I can deduce from the amended section 14 appear to be these :

Sub-section 1 (a).—Where a decree or order had been passed whether before or after the commencement of the Act and has not yet been executed, the Court *may* stay or suspend execution by the imposition of conditions as it may think fit.

(*b*) Where such conditions had been imposed and complied with, then the Court shall discharge or rescind the decree or order.

Sub-section 2.—The Court *shall* give relief as embodied in sub-section 1 where a tenant who uses the premises as a *bona-fide* residence is unable to obtain alternative accommodation.

Sub-section 3.—Where a decree or order had been passed before the commencement of this Act and not yet executed the Court must consider whether such a decree would have been passed if the Act had been in force. If in the opinion of the Court such an order could not have been passed then the Court is required to rescind or alter the decree.

Sub-section 3 has no application to the cases before me as the orders were passed *after* the commencement of the Act.

Nor has sub-section 2 any application for the premises are not used for residential purposes.

Sub-section 1 would apply and the point for determination is whether this court should exercise the discretion vested in it in favour of the judgment-debtors."

The learned Chief Judge refused to exercise his discretion in favour of the appellant company after holding that the said company had several buildings and godowns besides those in suit.

The appellant company went up on appeal to the High Court and the High Court confirmed the order of the learned Chief Judge on the 4th August 1947 on

S.C. 1949

TAI CHUAN & Co. v. CHAM SENG CHEONG.

the ground that it would not interfere with the exercise of discretion vested in the learned Chief Judge by law.

Now, what is noticeable is that neither the learned Chief Judge of the City Civil Court nor the learned Judges of the Appellate Court made any reference to the provisions (*b*) of section 14 (*1*). According to this provision if the tenant or any person permitted under section 12 to occupy premises complied with the conditions imposed by Court, the Court—to use the language of the Act—"shall discharge or rescind the order or decree." The provision (*a*) dealt with the stay or suspension of order or decree for ejectment; whereas the provision (*b*) dealt with the discharge or rescission of such an order. If the learned Chief Judge had referred to the 2nd Amending Act, Act XXVI of 1947, which, as pointed out above, was passed on the same date as the 1st Amending Act, he would have noticed that he had no discretion in the matter but to rescind or discharge the order for ejectment. By the 2nd Amending Act section 14 (*3*) of the 1st Amending Act was amended and under the 2nd Amending Act the Court could deal with an order of ejectment passed either before or after the commencement of the Urban Rent Control Act, 1946. Section 14 (*3*), as amended, was in these terms :

"Where any order or decree of the kind mentioned in section 11 or sub-section (*1*) of section 13 is made or given, whether before or after the commencement of this Act, and the order or decree has not been executed, and the Court is of opinion that such order or decree would not have been made or given if the provisions of section 11 or 13, as the case may be, were in force or applicable thereto at the time when the order or decree was made, the Court *shall*, on an application by the tenant or person permitted to occupy under section 12 (*1*), *rescind or alter the order or decree* in such manner as it thinks fit for the purpose of giving effect to this Act ; . . . . . ."

As both the High Court and the City Civil Court did not refer to this provision in their judgments, the appellant company filed an application thereunder a day after its appeal was dismissed by the High Court, that is, on the 5th August 1947. For one reason or another the case dragged on till the 13th November 1947 when objection was filed by the respondent. In the course of the objection the respondent charged the appellant company with having committed acts of waste or neglect. This plea was taken apparently because section 11 (*c*), as amended, provided that the order or decree for ejectment or recovery of possession of premises should not be discharged or rescinded if the tenant or any person permitted to occupy under section 12 of the Act was guilty of any acts of waste or neglect.

Before the case was ready for hearing the whole of the Urban Rent Control Act of 1946, as amended, was repealed and a new Urban Rent Control Act passed on the 17th January 1948. Relying on section 11 (*1*) (*f*) of the new Act the respondent filed an application praying that the application of the appellant company for rescission of the order might be dismissed, as he (the respondent) wanted the premises for his residential purpose. Section 11 (*1*) (*f*) provides :

"Notwithstanding anything contained in the Transfer of Property Act or the Contract Act or the Rangoon City Civil Court Act no order or decree for the recovery of possession of any premises to which this Act applies or for the ejectment of a tenant therefrom shall be made unless the building or part thereof to which the Act applies is reasonably and *bona-fide* required by the owner for occupation by himself exclusively for residential purposes and the owner executes a bond in such amount as the Court may deem reasonable that said premises will be occupied by himself and that he will give effect to such purpose within three months from the date of vacation of the premises by the tenant."

S.C. 1949

TAI CHUAN & Co. v. CHAN SENG CHEONG.

The learned Chief Judge of the City Civil Court held that the Act of 1948 was not only prospective but also retrospective in its operation and that as the respondent needed the premises for his residential purposes the decree could not be rescinded as provided by the above section. The application of the appellant company was accordingly dismissed. On appeal to the High Court the learned Judges of the Appellate Court held the same view as the learned Chief Judge of the City Civil Court and dismissed the appeal.

The submission now made on behalf of the appellant company is that the application of the appellant company to have the order of ejectment rescinded or discharged should be decided under the law as it stood at the time the application was filed and not under the law which came into force only after the filing of the application. To decide it under the present law means depriving the appellant company of a substantive right to have the order of ejectment discharged or rescinded and this, the learned counsel for the appellant company submits, cannot be done in view of section 5 (*b*) (*c*) and (*d*) of the General Clauses Act.

Section 5 of the General Clauses Act is in no way contrary to the general principle that when the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless a new statute shows a clear intention to vary such right. But an exception to this general principle is that, even though the Act is silent as to whether or not it should operate retrospectively, but if it deals with procedure or remedies it always operates retrospectively. [Cf. *Quilter* v. *Mapleson* (1); *In re A Debtor* (2);

(1) (1881-82) 9 (Q.B.) at p. 672. (2) (1936) 1 Ch. 237 at p. 242.

Maxwell's Interpretations of Statutes (3); and Craie's Interpretation of Statutes (4).]

Now, if the old Urban Rent Control Act is referred to it will be found that the object of the Act was to give relief to tenants or persons permitted under section 12 of the Act to occupy as against owners; the owners got no relief whatsoever as against these people unless they defaulted in the payment of rent or misused the premises which they occupied. Even if an owner wanted his house back from a tenant for his occupation as a residence he could not get it back. This was a glaring instance of injustice done to an owner. To remedy this state of affairs, section 11 (*1*) (*f*) was enacted. Under the present Act relief can be given to tenants and persons permitted to occupy under section 12 and to owners as well under certain circumstances, one of which is if the owner wants his building back for his own use as a residence. As the present Rent Control Act deals largely with the question of relief, we have no doubt in our mind that it operates retrospectively. Relief can accordingly be granted under section 11 (*1*) (*f*) of the present Act in a pending suit. That is what the High Court and the Rangoon City Civil Court did.

The learned counsel for the appellant company however submits that relief under section 11 (*1*) (*f*) can be given only in a suit filed by an owner for ejectment of a tenant or for recovery of possession of his building but before he can file such a suit he must get a certificate from the Controller as provided by section 14A that he (the owner) really needs the building for his occupation as a residence. According to the learned counsel section 11 (*1*) (*f*) does not apply to a case where a tenant applies to have the order of

(1) 8th edn. at p. 195. (2) 4th edn. at p. 314.

S.C. 1949

TAI CHUAN & Co. v. CHAN SENG CHEONG.

ejectment passed against him rescinded or discharged. It is true that the Act is silent on this point but the general principle is that where there is an obligation there is always an implied remedy or relief. As pointed out above, the whole object of the Act is to give relief not only to tenants but to owners as well under certain circumstances, and if relief were to be denied under section 11 (*1*) (*f*) when the tenant applied to have the order of ejectment passed against him rescinded it would mean not only frustrating the object of the Act but a denial of justice to the owner The Legislature, in framing the Urban Rent Control Act, 1948, never intended to have such a result as contended for by the learned counsel for the appellant company. We are clearly of opinion that section 11 (1) (*f*) can not only be used, so to speak, for the purpose of offence in a suit filed by the owner but also as a shield in a case where the tenant applies to have the order of ejectment passed against him discharged or rescinded.

For all these reasons we dismiss the appeal with costs.