Lala Ram Swarup and Others

Vs

Shikar Chand and Another

Civil Appeal No. 116 of 1964

(CJI P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, V. Ramaswami - I, R. Satyanarayan Raju JJ)

10.11.1965

JUDGMENT

GAJENDRAGADKAR, C.J. -

Appellant No. 1, Lala Ram Swaruup, and five other members of his family sued the two respondents, Shikar Chand and his son, for ejectment from the shop situated in Qasba Chandausi, Bazar Waram, on the allegation that the said premises had been let out to the respondents to conduct their shop on a monthly rent with effect from the 11th April, 1952, for a year. At the time when the present suit was brought, the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (U.P. Act III of 1947) (hereinafter called 'the Act') was in force. Section 3 of the Act imposes certain restrictions on the landlord's right to eject his tenant from the premises to which the Act applies. Broadly stated, the effect of the provisions contained in s. 3(1) is that a landlord can evict his tenant if he satisfies two conditions. The first condition is that he must obtain the permission of the District Magistrate to file such a suit; and the second condition is that he must prove the existence of one or the other of the seven grounds enumerated in clauses (a) to (g) of s. 3(1). We shall presently refer to the relevant provisions of this section.

In their plaint, the appellants pleaded that they needed the premises in suit to carry on their own business in the shop, and they alleged that they had applied for permission to the District Magistrate, Moradabad, under s. 3(1) of the Act; that the said permission had been refused by him, whereupon they had moved the Commissioner in his revisional jurisdiction under s. 3(2) of the Act; and that the Commissioner had given them permission to file the suit. That is how the appellants claimed to have satisfied both the conditions prescribed by s. 3(1). The appellants further claimed ejectment of the respondents and asked for a decree for damages for use and occupation of the suit premises from 11th April, 1953 to 11the July, 1954 @ Rs. 35/- per month. The suit (No. 349 of 1954) was filed on the 14th July, 1954.

The respondents resisted the claim made by the appellants on several grounds. They urged that the suit was bad for non-joinder of necessary parties; that the permission to sue granted to the appellants by the Commissioner was not valid in law; that the rent note executed by them was not admissible in evidence; and that the notice given by the appellants under section 106 of the Transfer of Property Act was also invalid in law.

On these pleadings, the learned Munsif, Chandausi, framed appropriate issues. Evidence was led by both the parties in support of their respective contentions. The learned trial Judge recorded findings in favour of the appellants on all the issues and decreed their suit with costs on the 25th March,

1955.

The respondents then preferred an appeal (Civil Appeal No. 213 of 1955) in the Court of the District Judge, Moradabad, and urged that the findings recorded by the trial Judge were erroneous and asked for the reversal of the decree passed by him. The learned District Judge rejected the respondents' contentions and confirmed the decree under appeal on the 2nd June, 1955.

That took the respondents to the High Court at Allahabad in second appeal (No. 1106 of 1955). The learned single Judge of the said High Court who heard this appeal, upheld the respondents' contention that the permission granted by the Commissioner under s. 3(3) of the Act was invalid in law; and so, he came to the conclusion that the appellants' suit was incompetent. This judgment was delivered on the 26th July, 1956. The learned Judge, however, allowed the appellants leave to file a Letters Patent Appeal.

The Letters Patent Appeal was placed before a larger Bench of three learned Judges of the High Court, because it was thought that the question raised by the appellants was of some importance. On the question as to whether the permission granted by the Commissioner was valid or not, the learned Judges who heard the appeal differed. Two of the learned Judges held that the said permission was invalid, whilst the third learned Judge held that it was valid. In accordance with the majority opinion the Letters Patent Appeal preferred by the appellants was dismissed on the 13th September, 1960. The appellants then applied for and obtained a certificate from the High Court and it is with the said certificate that this appeal has come to this Court.

At the hearing of this appeal, the first point which Mr. Goyal for the appellants has raised for our decision is that the courts below had no jurisdiction to consider the question about the validity of the permission granted by the Commissioner. He contends that s. 3 of the Act provides a self-contained code for the grant of permission, and all questions in relation to the grant or refusal of the said permission have to be decided by the appropriate authorities constituted under the Act. Once the question about the grant of permission asked for by a landlord is determined by the appropriate authorities, their decision is final and cannot be questioned in a civil court. In support of this argument, Mr. Goyal has based himself on the provisions contained in s. 3(4) and s. 16 of the Act. Section 3(4) provides that the order of the Commissioner under sub-section (3) shall, subject to any order passed by the State Government under s. 7-F, be final. Similarly, s. 16 provides that no order made under this Act by the State Government or the District Magistrate shall be called in question in any Court. The combined effect of these two provisions, according to Mr. Goyal, is to exclude the jurisdiction of the civil courts to entertain the question about the correctness, propriety or legality of the order passed by the Commissioner in the present case where by he granted permission to the appellants to bring the present suit.

In order to appreciate the validity of this argument, it is necessary to consider the scheme of the relevant provisions of the Act. Section 3(1) reads thus :-

> "Subject to any order passed under sub-s. (3) no suit shall, without the permission of the District Magistrate, be filed in any Civil Court against a tenant for his eviction from any accommodation, except on one or more of the following grounds".

It is unnecessary to cite the said grounds, because it is not disputed that the ground of personal need set out by the appellants justifies their claim for the respondents' ejectment. Section 3(2) and (3) as they stood at the relevant time read thus :-

> "(2) The party aggrieved by the order of District Magistrate granting or refusing to grant the permission referred to in sub-s. (1) may, within 30 days from the date of the order or the date on which it is communicated to him, whichever is later, apply to the Commissioner to revise the order.
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> (3) The Commissioner shall, as far as may be, hear the application within six weeks from the date of its making, and, if he is satisfied that the District Magistrate has acted illegally or with material irregularity or has wrongly refused to act, he may confirm or set aside the order of the District Magistrate".

We have already referred to s. 3(4).

It would thus be seen that the scheme of s. 3 is that if a landlord wants to bring a suit to eject his tenant, he has to apply to the District Magistrate for permission to do so. The District Magistrate may grant or refuse to grant such permission. After the District Magistrate makes an order on the landlord's application, the party aggrieved by the order can apply in revision to the Commissioner within 30 days; and the Commissioner, in exercise of his revisional jurisdiction, has to deal with the revision application under s. 3(3). If he is satisfied that the District Magistrate has acted illegally or with material irregularity, or has wrongly refused to act, he can make an appropriate order; and the order thus made by him is final under sub-s. (4), subject to any order that the State Government may pass under s. 7-F of the Act.

Section 7-E provides for the revisional powers of the State Government in very wide terms. It reads thus :-

> "The State Government may all for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in section 3 or requiring any accommodation to be let or not to be let to any person under s. 7 and may make such order as appears to is necessary for the ends of justice".

It is clear that the power conferred on the State Government by s. 7-F to revise the orders passed by the Commissioner under s. 3(3) is very wide. In the first place, the State Government need not necessarily be moved by may party in that behalf. It may call for the record suo moto and it can exercise its powers in the interests of justice. In other words, whenever it is brought to the notice of the State Government either by a party aggrieved by the order passed by the Commissioner, or otherwise, that the order passed by the Commissioner is unfair or unjust, the State Government may in the ends of justice pass an appropriate order revising the order made by the Commissioner. That, in brief, is the scheme of the relevant provisions of the Act relating to the grant of permission to the landlord to sue has tenant in ejectment.

Mr. Goyal contends that the words of s. 3(4) read with s. 16 are clear and unambiguous, and they indicate that the jurisdiction of the civil courts is completely excluded in relation to the question as to whether permission has been properly or validly granted or refused by the appropriate authorities exercising their powers under the relevant provisions of the Act. It cannot be seriously dispute that the jurisdiction of the civil courts to deal with civil causes can be excluded by the Legislature by special Acts which deal with special subject-matters; but the exclusion of the jurisdiction of the civil courts must be made by a statutory provision which expressly provides for is, or which necessarily and inevitably leads to that inference. In other words, the jurisdiction of the civil courts can be excluded by a statutory provision which is either express in that behalf or which irresistible leads to

that inference.

One of the points which is often treated as relevant in dealing with the question about the exclusion of civil courts' jurisdiction, is whether the special statute which, it is urged, excludes such jurisdiction, has used clear and unambiguous words indicating that intention. Another test which is applied is : does the said statute provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions? Applying these two tests, it does appear that the words used in s. 3(40 and s. 16 are clear. Section 16 in terms provides that the order made under this Act to which the said section applies shall not be called in question in any court. This is an express provision excluding the civil courts' jurisdiction. Section 3(4) does not expressly excluded, appears to be inescapable. Therefore, we are satisfied that Mr. Goyal is right in contending that the jurisdiction of the civil courts is excluded in relation to matters covered by the orders included within the provisions of s. 3(4) and s. 16.

This conclusion, however, does not necessarily mean that the plea against the validity of the order passed by the District Magistrate, or the Commissioner, or the State Government, can never be raised in a civil court. In our opinion, the bar created by the relevant provisions of the Act excluding the jurisdiction of the civil courts cannot operate in cases where the plea raised before the civil court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity. Take, for instance, the case of an order purported to have been passed by a District Magistrate who is not a District Magistrate in law. If it is shown by a party impeaching the validity of the order in a civil court that the order was passed by a person who was not a District Magistrate, the order in law would be a nullity,, and such a plea cannot be ruled out on the ground of the exclusion of the jurisdiction of the civil court. Similarly, if an order granting permission to a landlord is passed by a District Magistrate of one District when the property in question is situated in another district outside his jurisdiction, a party would be entitled to urge before a civil court that the permission purported to have been granted by the District Magistrate is wholly invalid and a nullity in law. Let us take another case to illustrate the position. If s. 3 had provided that before a District Magistrate grants permission to the landlord to sue his tenant, he shall issue notice to the tenant and give him an opportunity to represent his case before the application of the landlord is dealt with on the merits; and in the face of such a statutory provision, the District Magistrate grants permission ex parte without issuing notice to the tenant; in such a case, the failure of the District Magistrate to comply with the mandatory provision prescribed in that behalf, would render the order passed by him completely invalid, and a plea that an order has been passed by the District Magistrate without complying with the mandatory provision of the Act, would be open for examination before a civil court. Likewise, in the absence of such a statutory provision, if it is held that the proceedings before the appropriate authorities contemplated by s. 3 are in the nature of quasi-judicial proceedings and they must be tried in accordance with the principles of natural justice, and it is shown that in a given case, an order has been passed without notice to the party affected by such order, it would be open to the said party to contend that an order passed in violation of the principles of natural justice is a nullity and its existence should be ignored by the civil court. Such a plea cannot, in our opinion, be excluded by reason of the provisions contained in s. 3(4) and s. 16 of the Act.

In this connection, we may incidentally refer to a recent decision of this Court in Lala Shri Bhagwan & Anr. v. Shri Ram Chand and Another ([1965] 3 S.C.R. 218). In that case, this Court upheld the decision of the Allahabad High Court which had set aside the order passed by the appropriate authority under the relevant provisions of the Act on the ground that in passing the said order, principles of natural justice had not been followed. The view which was taken by this Court in that

case was that the proceedings taken by a landlord under s. 3 are proceedings of a quasi-judicial nature and the appropriate authorities, in exercising their powers in relation to such proceedings, must act in accordance with the principles of natural justice. It must, however, be made clear that in that case, the question as to whether such a plea can be raised in a civil court having regard to the bar created by section 3(4) and 16 of the Act, was not raised and has not been considered.

We ought to point out that the provisions contained in s. 3(4) and 16 undoubtedly raise a bar against pleas which challenge the correctness or propriety of the orders in question. The merits of the order are concluded by the decision of the appropriate authorities under the Act and they cannot be agitated in a civil court. But where a plea seeks to prove that the impugned order is a nullity in the true legal sense, that is a plea which does not come within the mischief of the bar created by s. 3(4) and 16 of the Act.

Similar questions have often been considered by judicial decisions to some of which we will now refer. In The Secretary of State for India in Council v. Roy Jatindra Nath Chowdhury and Anr., (A.I.R. 1924 P.C. 175.) dealing with the effect of s. 6 of the Bengal Alluvion and Diluvion Act (IX of 1847), the Privy Council observed that the finality of the orders specified in the said section had to be read subject to two conditions; the first was that the said orders should not suffer from any fundamental irregularity, that is to say, "a defiance or non-compliance with the essentials of the procedure"; and the second condition was that the alleged defiance or non-compliance with the essentials of the procedure must be strictly proved by the party alleging it. This decision shows that if the special statute prescribes certain mandatory conditions subject to which the orders in question can be passed, and the said mandatory provisions are violated, the validity of the said orders can be challenged in a civil proceeding. Similarly, if principles of natural justice are not complied with, the orders passed in violation of the said principles would be wholly inoperative in law and their validity can be impeached in civil proceedings.

The same principle has been emphasised by the Privy Council in Secretary of State v. Mask & Co. (67 I.A. 222.). In that case, though the words used in s. 188 and 191 of the Sea Customs Act (1878) were held to exclude the jurisdiction of the civil courts, the Privy Council observed that even where jurisdiction is excluded, the civil courts have jurisdiction "to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure". This later clause presumably covers cases where orders are passed in violation of the principles of natural justice.

In M/s Kamala Mills Ltd. v. The State of Bombay ((1966) 1 S.C.R. 64.), while dealing with a similar point, this Court has considered the effect of the two decisions of the Privy Council, one in the case of Mask & Co. (67 I.A. 222.), and the other in Raleigh Investment Company Ltd. v. Governor General in Council (74 I.A. 50, at pp. 62-63.). The conclusion reached by this Court in M/s. Kamala Mill's case ((1966) 1 S.C.R. 64.) also supports the view which we are taking in the present appeal.

Therefore, while upholding the contention raised by Mr. Goyal that the jurisdiction of the civil courts is barred, we wish to make it clear that this contention will not avail Mr. Goyal if the respondents' plea, if upheld, would render the permission granted by the Commissioner totally invalid and a nullity.

The second point which then calls for our decision in the present appeal is : is the permission granted by the Commissioner without jurisdiction and as such, a nullity ? The majority decision of

the Allahabad High Court is in favour of the respondents; and Mr. Goyal's argument is that the said decision is inconsistent with the true scope and effect of the provisions prescribed by s. 3(3) of the Act. The decision of this point lies within a very narrow compass. The majority decision is that the jurisdiction conferred on the Commissioner under s. 3(3) is exactly similar to the jurisdiction conferred on the High Court under s. 115 of the Code of Civil Procedure. It will be recalled that s. 115 of the Code confers revisional jurisdiction on the High Court to make such order as it thinks fit in a given case, if the subordinate court whose order is brought before the High Court under s. 115 "appears (a) to have exercised a jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or (c) to have acted in exercise of its jurisdiction illegally or with material irregularity". There is no doubt that the requirements of clauses (a), (b) & (c) all centre round the question about the jurisdiction of the subordinate court, and the view which has been accepted by the majority decision under appeal is that the same limitation must be imported in construing the scope of the authority and power conferred on the Commissioner by s. 3(3).

Let us examine whether this conclusion is right. In construing the provision of s. 3(3), one factor which is patent is that it does not refer to any considerations of jurisdiction at all. In fact, it is not easy to conceive of a limitation as to jurisdiction being relevant in s. 3(3), because the said provision deals with orders passed by District Magistrates, and the District Magistrates normally would have jurisdiction to deal with applications made by landlords. But quite apart from this aspect of the matter, the words used in s. 3(3) are unambiguous. There are three categories of cases in which the Commissioner can interfere with the order passed by the District Magistrate. If the District Magistrate has acted illegally, the Commissioner can interfere with his order; so can he interfere with the order if the District Magistrate has acted with material irregularity; and lastly, the Commissioner can interfere with the order of the District Magistrate if the District Magistrate has wrongly refused to act. This last clause is wide enough to empower the Commissioner to correct the error committed by the District Magistrate in making an order brought before it; quite clearly if the District Magistrate refuses to grant permission and the Commissioner thinks that in doing so, he has committed an error, that would be a case where the District Magistrate has wrongly refused to act, and that would give the Commissioner jurisdiction to exercise his revisional power.

It is significant that the revisional application can be made to the Commissioner only against orders passed by the District Magistrate granting or refusing to grant such permission. It is, we think, fallacious to assume that a party can move the Commissioner under s. 3(3) in cases where the District Magistrate just refuses to make an order on the application made by the landlord for permission to bring suit against the tenant. If a District Magistrate just does not deal with the application and passes no order on it, the party aggrieved may be justified in applying for an appropriate writ to the High Court or adopt some other suitable remedy in law; but a revision in such a case does not appear to be competent under s. 3(3). Besides, the illegality or the irregularity to which s. 3(3) refers need not necessarily be correlated with questions of jurisdiction. Therefore, we are satisfied that the High Court was not justified in introducing a limitation pertaining to questions of jurisdiction in determining the scope of the width or the revisional power conferred on the Commissioner by s. 3(3). That is why it must be held that the High Court was in error in coming to the conclusion that the permission granted by the Commissioner in exercise of the powers conferred on him by s. 3(3) is invalid in law. As we have already emphasised, the only plea which can be raised before a civil court in relation to orders passed under the relevant provisions of the Act can be a plea which, if sustained, would render the order wholly invalid and as such, a nullity. No other plea can be raised, because all other pleas are barred by ss. 3(4) and 16 of the Act.

In this connection, we may incidentally point out that by a subsequent amendment of s. 3(3), the

Legislature has made it clear that its intention is to confer wide jurisdiction on the Commissioner. The amendment in question has been introduced by Act 17 of 1954. the amended provision reads thus :-

> "The Commissioner shall hear the application made under sub-section (2), as far as may be, within six weeks from the date of making it, and he may, if he is not satisfied as to the correctness, legality or propriety of the order passed by the District Magistrate or as to the regularity of proceedings held before him, alter or reverse his order, or make such other order as may be just and proper".

There is no doubt that under this amended provision, the Commissioner can deal not only with the legality, but also with the correctness and propriety of the order passed by the District Magistrate. In our opinion, the position about the Commissioner's powers was not different even under the unamended provision.

It may also be relevant to point out that the power conferred on the State Government at all material times by s. 7-F was very wide. As we have already indicated, in exercise of its powers under s. 7-F, the State Government can pass such orders as appear to it to be necessary in the ends of justice. Therefore, there is no doubt that the relevant provisions of the Act did not intend, even prior to the amendment of 1954, to limit the jurisdiction of the Commissioner only to cases where irregularity or illegality had been committed by the District Magistrate in granting or refusing to grant permission.

The result is, the appeal is allowed, the order passed by the High Court in the Letters Patent Appeal is set aside, and that of the District Court restore with costs throughout.

Appeal allowed.

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