

Vijendra Nath & Ors.

Vs

Jagdish Rai Aggarwal & Ors.

Civil Appeal No. 1314 of 1966

(R. S. Bachawat, J. M. Shelat JJ)

02.12.1966

JUDGMENT

BACHAWAT, J. –

One S. N. Bhatnagar was the tenant of a building in a slum area in Delhi under the respondents. On December 5, 1960, the respondents obtained a decree for eviction of the tenant. By this decree, the tenant was allowed time to vacate till March 2, 1963. On June 19, 1964, the respondents obtained the permission for the execution of the decree from the competent authority under section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (Act No. XCVI of 1956). Section 19 as it stood before December 21, 1964, was in these terms :-

"19. (1) Notwithstanding anything contained in any other law for the time being in force, no person who has obtained any decree or order for the eviction of a tenant from any building in a slum area shall be entitled to execute such decree or order except with the previous permission in writing of the competent authority.

(2) Any person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the competent authority in such form and containing such particulars as may be prescribed.

(3) On receipt of such application the competent authority, after giving an opportunity to the tenant of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall by order in writing either grant such permission or refuse to grant such permission.

(4) Where the competent authority refuses to grant the permission it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant".

Before us, learned Counsel on both sides agreed that on or about July 22, 1964, the respondents applied for execution of the decree. The tenant filed objections to the execution application. The objections were dismissed on August 7, 1964. An appeal against this order was dismissed on March 19, 1965, and a revision petition to the High Court was dismissed on March 24, 1965. In the meantime the Slum Areas (Improvement and Clearance) Amendment Act, 1964 (Act No. XLIII of 1964) which came into force on December 21, 1964, substituted for section 19 of the principal Act the following section :-

"19. Proceedings for eviction of tenants not to be taken without permission of the competent authority - (1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority -

(a) institute, after the commencement of the Slum Areas (Improvement and Clearance) Amendment Act, 1964, any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or

(b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order.

(2) Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the competent authority in such form and containing such particulars as may be prescribed.

(3) On receipt of such application, the competent authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall by order in writing, either grant or refuse to grant such permission.

(4) In granting or refusing to grant the permission under sub-section (3), the competent authority shall take into account the following factors, namely, -

(a) whether alternative accommodation within the means of the tenant would be available to him if he were evicted;

(b) whether the eviction is in the interest of improvement and clearance of the slum areas;

(c) such other factors, if any, as may be prescribed.

(5) Where the competent authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant".

During the pendency of the appeal from the order dated August 7, 1964, the application for execution filed on July 22, 1964, had been consigned to the record room. For this reason on March 23, 1965, the respondents filed another application for execution of the decree. The object of this application was to revive the substantive application for execution which was filed on July 22, 1964, and which was still pending. The application made on March 23, 1965, must be regarded as a continuation of the execution proceeding commenced on July 22, 1964. The tenant filed fresh objections to the execution of the decree. He contended that the respondents were not entitled to execute the decree without obtaining a fresh permission from the competent authority under the new section 19 inserted by the Slum Areas (Improvement and Clearance) Amendment Act, 1964. The objections were dismissed by the executing court on April 27, 1965. The order was confirmed by the appellate court on June 9, 1965. A revision petition to the High Court was dismissed on December 15, 1965. During the pendency of the revision petition, the tenant died and the appellants were brought on the record as his legal representatives. The appellants have now filed this appeal by

Special Leave.

Sub-section (1)(a) of section 19 inserted by the Amending Act bars the institution of any suit for obtaining a decree for the eviction of any tenant from any building in a slum area after the commencement of the Amending Act without the previous permission in writing of the competent authority. This provision has no application to the present case because before the commencement of the Amending Act the respondents had instituted a suit and obtained a decree for the eviction of the tenant. Sub-section 1(a) of the newly inserted section 19 imposes a bar on the execution of a decree for the eviction of a tenant from any building in a slum area obtained in any suit instituted before the commencement of the Amending Act without the previous permission in writing of the competent authority. The bar under section 19 operates notwithstanding anything contained in any other law for the time being in force. In granting or refusing the permission under the new section 19, the competent authority is required to take into account certain matters which it was not bound to take into account under the repealed section 19. Now on July 22, 1964 before the commencement of the Amending Act, the respondents had filed the application for execution of the decree for eviction of the tenant after obtaining the requisite permission of the competent authority under the repealed section 19. Under the law then in force, this application for execution was competent. The question is whether this application is rendered incompetent by the absence of a fresh permission from the competent authority under the newly inserted section 19.

Unless the Amending Act affects the pending execution proceeding by express words or by necessary implication, the rights of the parties in the pending proceeding must be decided according to the law in force at the time when the proceeding was commenced and the decree-holder will be entitled to continue the proceeding without obtaining a fresh permission from the competent authority. We think that the new section 19 inserted by the Amending Act does not affect a pending execution proceeding either expressly or by necessary implication and makes no change in the law applicable to the proceeding. The newly inserted section 19 does not provide for stay of the pending proceeding nor does it otherwise show any clear intention to vary the rights of the parties in the proceeding. If we are to hold that the pending application for execution is liable to be dismissed in the absence of the previous permission of the competent authority under the newly inserted section 19, the decree-holder would be entirely without a remedy in a case where a fresh application for execution would be barred by limitation. The legislature could not have intended such a result. The rights of the parties in the pending, application must be decided according to the law as it existed on July 22, 1964, when the application was filed and the execution of the decree commenced. Under the law then in force, the application was competent. The objections filed by the tenant were, therefore, rightly dismissed by the Courts below.

In the result the appeal is dismissed with costs.

Appeal dismissed.

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