SUPREME COURT OF INDIA

Bhagwan Das

Vs.

Paras Nath

C.A.No.1617 of 1968

(S. M. Sikri, R. S. Bachawat and K. S. Hegde, JJ.)

27.09.1968

JUDGEMENT

HEGDE, J.:-

1. The question of law that arises for decision in this appeal by special leave is not free from difficulty. That question is, whether a decree for eviction obtained in a suit instituted after obtaining the permission of the Commissioner under sub-section (3) of Section 3 of the U. P. (Temporary) Control of Rent and Eviction Act, 1947 (to be hereinafter referred to as the Act) becomes unenforceable if the State Government acting under Section 7-F of that Act revokes the permission granted by the Commissioner after the decree is passed?

2. The appellant was a tenant of the respondent in respect of a shop in Baluganj in Agra. On January 2, 1959, the respondent applied to the District Magistrate under Section 3 (1) of the Act for permission to institute a suit against the appellant for evicting him from the shop in question. That application was rejected by the District Magistrate as per his order of July 9, 1959. The respondent took up the matter in revision to the Commissioner under sub-section (2) of Section 3. The

Commissioner reversed the order of the District Magistrate and granted the permission asked for on October 16, 1959. As against that order the appellant moved the State Government under Section 7-F on November 17, 1959. On January 1, 1960, the respondent served on the appellant a notice under Section 106 of the Transfer of Property Act. The appellant replied to that notice on January 6, 1960. In that reply he informed the respondent that he had already moved the State Government to revoke the permission granted by the Commissioner. On February 13, 1960 the respondent instituted suit No. 115 of 1960 in the Court of Munsiff, Agra seeking for the eviction of the appellant from the suit premises. The appellant filed his written statement in that case on May 7, 1960. Therein again he took the plea that the permission granted by the Commissioner is not final as he had moved the Government to revoke the same. The suit was decreed by the learned Munsif on November 2, 1960. The appellants went up in appeal as against that order to the Civil Judge, Agra. On January 27, 1961, the State Government revoked the permission granted by the Commissioner during the pendency of the appeal. Relying on this order the Civil Judge of Agra allowed the appeal of the appellant on February 9, 1961. As against that decision the respondent went up in second appeal to the High Court. The High Court allowed the second appeal on 19th March, 1968 following the Full Bench decision of that Court in Bashi Ram v. Mantri Lal, ILR (1965) 1 All 545 = (AIR 1965 All 498) (FB). This appeal is directed against that decision.

3. The Act was intended as a temporary measure as could be gathered from its title as well as the preamble. It is deemed to have come into force on the 1st day of October 1946 though it was passed in 1947. Under the Act as originally stood, the decision of the District Magistrate under Section 3 was neither appealable nor revisable. As per the amendments effected in 1952 a limited power of revision was conferred on the Commissioner. By the Amending Act 17 of 1954, the power conferred on the Commissioner was enlarged and Section 7-F was incorporated in the Act which says that:

"the State Government may call for the records of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in Section 3 .....and make such order as appears to it necessary for the ends of justice."

The only sections in the Act material for the purpose of this appeal are Sections 3 and 7-F. Section 3 reads thus:

"Restrictions on evictions.-Subject to any order passed, under sub-section (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:

(a) that the tenant is in arrears of rent for more than three months and has failed to pay the same to the landlord within one month of the service upon him of a notice of demand;

(b) that the tenant has wilfully caused or permitted to be caused substantial damage to the accommodation;

(c) 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;

(d) that the tenant has created a nuisance or has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation, or which is likely to affect, adversely and substantially the landlord's interest therein;

(e) that the tenant has on or after the 1st day of October, 1946, sub-let the whole or any portion of the accommodation without the permission of the landlord;

(f) that the tenant has renounced his character as such or denied the title of the landlord and the latter has not waived his right or condoned the conduct of the tenant;

(g) that the tenant was allowed to occupy the accommodation as a part of his contract of employment under the landlord and his employment has been determined.

Explanation. - For the purposes of sub-section (e) lodging a person in a hotel or a lodging-house shall not be deemed to be sub-letting.

(2) where any application has been made to the District Magistrate for permission to sue a tenant for eviction from any accommodation and the District Magistrate grants or refuses the permission, the party aggrieved by his order may, within 30 days from the date on which the order is communicated to him, apply to the Commissioner to revise the order.

(3) 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 revise his order, or make such other order as may be just and proper.

(4) The order of the Commissioner under sub-section (3) shall, subject to any order passed by the

State Government under Section 7 (F) be final.

We have earlier quoted the relevant portion of Section 7 (F).

4. Conflicting opinions were expressed by different Benches of the Allahabad High Court as to the scope of Section 3 till the decision of the Full Bench in Bashi Ram's Case, ILR (1965) 1 All 545 = (AIR 1965 All 498) (FB). The Full Bench held that a decree obtained in a suit for eviction instituted after obtaining the requisite permission will not become unenforceable even if the State Government revoked, after the decree is passed, the permission granted, in exercise of its powers under Section 7-F. Majority of the Judges in that case further held that once a suit is instituted after obtaining the permission of the District Magistrate, any further order made either by the Commissioner or the State Government cannot affect the course of that suit or the decree passed therein. Dwivedi, J., the other Judge, did not express any opinion on that question but even according to him in the appeal filed against the decree, the appellate court cannot receive in evidence the order made by the State Government which means that the decree cannot be reversed on the ground that the State Government had revoked the permission granted. The correctness of the Full Bench decision is challenged by the appellant in this appeal. In support of his interpretation of Ss. 3 and 7-F he placed reliance on the decision of a Division Bench of the High Court of Allahabad in Dr. S. L. Khoparji v. State Govt. of U. P., 1958 All LJ 724. He also sought support from the decision of a Single Judge of that Court in Basant Lal Sah v. Bhagwati Prasad Sah, AIR 1964 All 210. It is not necessary to refer to the various decisions of the Allahabad High Court on this question. Suffice it to say that in that court there was serious cleavage of opinion on the question that we are considering in this appeal till the decision of the Full Bench in Bashi Ram's case, ILR (1965) 1 All 545 = (AIR 1965 All 498) (FB) (supra). We were given to understand that Dhavan, J., had doubted the correctness of the decision of the Full Bench and had requested the Chief Justice to constitute a larger Bench to consider the correctness of the decision in Bashi Ram's case, ILR (1965) 1 All 545 = (AIR 1965 All 498) (FB) but in view of the pendency of this appeal, the constitution of a larger bench was not considered necessary.

5. The contention of Mr. Goyal, the learned Counsel for the appellant was that the Act generally speaking, has restricted the right of the landlord to evict his tenant, to one or other of the grounds mentioned in Clauses (a) to (g) of Section 3 (1); but in order to meet any exceptional case, it is provided in Sec. 3 (1) that a suit for eviction may be instituted on any ground other than those mentioned in Clauses (a) to (g) if the permission of the District Magistrate is obtained; the order made by the District Magistrate is revisable both by the Commissioner as well as the State Government; the only order that is final is that made by the State Government. If a landlord chooses to institute a suit on the basis of the permission granted by the District Magistrate or the Commissioner without waiting for the decision of the State Government he takes the risk; if the State Government revokes the permission granted by the District Magistrate or the Commissioner then the suit must be deemed to have been instituted without permission and consequently not maintainable. Mr. Goyal urged that if the decision in Bashi Ram's case, ILR (1965) 1 All 545 = (AIR 1965 All 498) (FB) is accepted as correct then so far as the tenant is concerned, generally speaking, he cannot invoke the powers of the State Government under Section 7-F because immediately after the decision of the Commissioner, if the same is in his favour, the landlord is likely to institute a suit for eviction and thus nullify the power of the State Government under S. 7-

F. He urged that as Section 7-F empowers the State Government to revise the order made by the subordinate authorities whether the same is in favour of the landlord or the tenant we should not place an interpretation on Section 3 which would affect the power of the State Government to do justice to the tenants for whose benefit the Act has been enacted.

6. On the other hand it was urged by Mr. C. B. Aggarwal, learned Counsel for the respondent that the landlord has a right to sue for the eviction of his tenant under the provisions of the Transfer of Property Act subject to the restrictions stipulated therein. That is a statutory right. The provisions contained in the Act to the extent they encroach upon the rights of the landlord either specifically or by necessary implication control the rights of the landlord. In other respects the land-lord's rights under the Transfer of Property Act remain unaffected. According to him the only restriction placed on the landlord in the matter of instituting a suit for eviction on ground other than those mentioned in Clauses (a) to (g) in Section 3 (1) is to obtain the prior permission of the District Magistrate subject to the order made under sub-section (3) of Section 3 by the Commissioner; once a suit is validly instituted in accordance with those provisions, no order of the State Government can either interfere with the course of that suit or invalidate the decree obtained therein. He urged that if the position as contended by the learned Counsel for the appellant, curious results are likely to follow. Section 7-F does not fix any period within which the State Government must act. It can exercise its power under that provision at any time it pleases-may be after 10 years or 20 years; the power conferred on the State Government is extremely wide as observed by this Court in Shri Bhagwan v. Ram Chand, (1965) 3 SCR 218 = (AIR 1965 SC 1767). Therefore it can revoke the permission granted after the decree for eviction is confirmed by the High Court or even the Supreme Court and thus make a mockery of the judicial process; this could not have been the intention of the legislature. According to Mr. Aggarwal from the very scheme of the Act and from the very nature of the power of conferred on the State Government, it cannot be exercised after a suit is instituted after complying with the requirements of sub-section (1) of Section 3. His further contention was that on a proper construction of sub-section (1) of Section 3, it would be seen that the suit instituted after obtaining the required permission being a validly instituted suit, its progress cannot be interrupted; the permission required under Section 3 (1) is the permission of the District Magistrate subject to any order under Sec. 3 (3) by the Commissioner; in other words the permission given by the DM is not final till affirmed by the Commissioner; till then it remains tentative; once the Commissioner affirms the same or grants the permission asked for it becomes final and thus amounts to a valid permission to sue; hence a suit filed on the basis of that permission is a validly instituted suit unless the permission granted was revoked by the State Government before the institution of the suit. Proceeding further he stated that it is true that the order of the Commissioner though final yet it is subject to any order that may be passed by the State Government; but Section 3 (1), the provision dealing with the permission to file a suit for eviction, does not refer to the order under Section 7-F; it only speaks of the permission granted by the District Magistrate subject to the order of the Commissioner and not further subject to any orders made by the State Government. In this connection he invited our attention to the fact that as against the order passed by the District Magistrate under sub-section (1) of Section 3, a revision petition can be filed before the Commissioner within 30 days of that order and not thereafter. The Commissioner has not even the power to condone the delay in filing the revision petition. Further under sub-section (3) of Section 3, the Commissioner is required to hear the application made under sub-section (2) of Section 3, as far as may be within six weeks from the date of making it. All these provisions indicate that the legislature was of the opinion that the proceedings under Section 3 should be carried on expeditiously and the decision of the Commissioner should be considered as final. According to Mr.

Aggarwal, the question of granting or refusing to grant the permission under Section 3 are primarily to be dealt with only by the District Magistrate and the Commissioner. They are the only tribunals in the hierarchy of the tribunals constituted for that purpose. The power given to the Government under Section 7-F is merely a supervisory power. That is why no limitation is imposed on the exercise of that power either in the matter of time within which it should be exercised or the circumstances under which it can be exercised. Such a power according to him is a reserve power and therefore has to be exercised before the Court's jurisdiction is invoked. He particularly laid emphasis on the fact that sub-section (1) of Section 3, the compliance of which is necessary before validly instituting the suit, does not at all refer to an order under Section 7-F.

7. After examining the provisions of this Act, we are constrained to observe that the drafting of this Act leaves considerable room for improvement despite the fact that it was amended twice over. Though it was intended to be a temporary measure when it was originally enacted, it has now remained in the statute book for over 20 years and there is no knowing how long the same will continue to be in force. Therefore it is but appropriate that the provisions of this Act should be clear and unambiguous. From sub-section (1) of Section 3 it is not possible of the District Magistrate. No guidelines are laid down therein to regulate the exercise of the powers of the District Magistrate. It is not possible to find out from that provision under what circumstances the District Magistrate can grant the permission asked for and under what circumstances he can refuse the same. It is likely that different District Magistrates are exercising that power in different ways. One consideration may appeal to one District Magistrate and a totally different consideration may influence another District Magistrate. It would have been appropriate if the legislature had defined the scope of the powers of the District Magistrate or at least laid down certain guidelines for regulating his discretion. Sub-s. (3) of S. 3 says that if the Commissioner is not satisfied as to the correctness, legality or propriety of the order passed by the District Magistrate, he may alter or reverse the order of the District Magistrate or make such other order as may be just and proper. It is not possible to find out on what basis the Commissioner can determine the correctness, legality or propriety of the order made by the District Magistrate. As seen earlier no restrictions are placed on the powers of the District Magistrate in granting or refusing to grant the permission asked for under Section 3 (1). Therefore the only thing the Commissioner can do is to exercise his discretion in preference to the discretion exercised by the District Magistrate. Now coming to the power conferred on the State Government under Section 7-F, it would be seen that it is a power of wide amplitude. It can be exercised by it in any way it pleases. No restriction either as to the time within which it can be exercised or as to the circumstances under which it can be exercised is placed on the State Government. Under these circumstances the anomalies pointed out by Mr. Goyal as well as by Mr. Aggarwal are inevitable. Therefore in construing this Act, no useful purpose will be served by taking into consideration the hardship to one party or the other is inevitable. Neither Counsel suggested to us any interpretation which could steer clear of the anomalies pointed out at the bar. Therefore we have to fall back on the grammatical construction of sub-section (1) of Section 3 and leave out of consideration all other rules of construction for finding out the intention of the legislature. Section 3 (1) does not restrict the landlord's right to evict his tenant on any of the grounds mentioned in Cls. (a) to (g) of that sub-section. But if he wants to sue his tenant for eviction on any ground other than those mentioned in those clauses the he has to obtain the permission of the District Magistrate whose discretion is subject to any order passed under sub-section (3) of Section 3 by the Commissioner. These are the only restrictions placed on the power of a landlord to institute a suit for eviction of his tenant. If a landlord files a suit for the eviction of his tenant without obtaining the permission of the District Magistrate and if the Commissioner revokes the permission granted by the District Magistrate in a

properly instituted application under Section 3 (2) then the suit instituted by him will be considered as having been filed without the permission of the District Magistrate because Section 3 (1) in specific terms says that the permission given by the District Magistrate is subject to any order passed under sub-section (3). In other words the permission given by the District Magistrate does not acquire any finality until either the period fixed for filing an application under sub-section (2) of Section 3 expires and no application under that section was filed within that time or if an application had been filed within that time, the same had been disposed of by the Commissioner. The permission to file a suit for eviction assumes finally under Section 3 (1) once the Commissioner decides the revision petition pending before him. In fact sub-section (4) of Section 3 says that the order of the Commissioner is final. It is true that that order despite the fact that it is final is subject to any order passed by the State Government under Section 7-F. There is no provision in the Act providing that a suit validly instituted after getting the required permission under Section 3 (1) ceases to be maintainable because of any order made by the State Government under S. 7-F. Similarly there is no provision in the Act invalidating a decree passed after the Act came into force in a validly instituted suit. Section 14 provides:-

"no decree for the eviction of a tenant from any accommodation passed before the date of commencement of this Act shall, in so far as it relates to the eviction of such tenant, be executed against him as long as this Act remains in force except on any of the grounds mentioned in Section 3:

Provided that the tenant agrees to pay to the landlord "reasonable annual rent" or the rent payable by him before the passing of the decree whichever is higher."

This provision applies only to decree passed before the date of the commencement of the Act. A decree of a Court in a suit validly instituted is binding on the parties to the same. It is true that the finality or the force of a decree can be taken away by a statute, but the Court will not readily infer that a decree passed by a competent Court has become unenforceable unless it is shown that a provision of law has specifically or by necessary implication made that decree unenforceable. No such provision was brought to our notice. On an examination of the relevant provisions of the Act our conclusion is that when the Commissioner set aside the order passed by the District Magistrate granting permission to file a suit for ejecting a tenant, the order of the Commissioner prevails. If he cancels the permission granted by the District Magistrate there is no effective permission left and the suit instituted by the plaintiff without awaiting his decision must be treated as one filed without any valid permission by the District Magistrate. To this extent we are in agreement with the decision of Upadhaya, J., in Munshi Lal v. Shambhu Nath Ram Kishan, 1958 All LJ 584. From this it follows that the Full Bench decision in Bashi Ram's case, ILR (1965) 1 All 545 = (AIR 1965 All 498) (FB) to the extent it held that a suit filed by the landlord after obtaining the permission of the District Magistrate cannot become infructuous even if the Commissioner revokes the permission, is incorrect. But we agree with the Full Bench that a suit validly instituted after obtaining a permission as required by Section 3 (1) does not cease to be maintainable even if the State Government revokes after the institution of the suit, the permission granted. If the State Government revokes the permission granted before the institution of the suit then there would be no valid permission to sue.

In other words the State Government's power to revoke the permission granted under Section 3 (1) gets exhausted once the suit is validly instituted.

8. For the reasons mentioned above, this appeal fails and the same is dismissed. But in the circumstances of the case, we make no order as to costs.

Appeal dismissed.