

SUPREME COURT OF INDIA

Purshottam Das

Vs.

Raj Mani Devi

C.A.No.1449 of 1966

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

30.10.1968

JUDGEMENT

BACHAWAT, J.:-

1. The appellant is the tenant and the respondent is the land lord of House No. 5B. Old 122 Maya Mirganj, Allahabad. The appeal arises out of a suit for ejection by the landlord against the tenant from the house. On October 11, 1961, the landlord obtained permission to institute the suit from the Rent Control and Eviction Officer under Section 3 (1) of the U. P. (Temp.) Control of Rent and Eviction Act, 1947. On October 14, 1961 the landlord instituted the present suit for eviction against the tenant. On March 27, 1962 the Commissioner Allahabad Division acting under Section 3 (3) revoked the permission to institute the suit. On March 30, 1963 the State Government acting under Sec. 7F set aside the Commissioner's order and gave leave to the landlord to file the suit with effect from July 30, 1963. On July 11, 1963 the Trial Court decreed the suit. The tenant filed an appeal against the decree. On November 4, 1963 the appellate court set aside the decree and remanded the suit for fresh trial. After the suit went back on remand the Trial Court decreed the suit on March 2, 1964. The Trial Court held that the permission granted by the State Government became effective from July 30, 1963 and as the suit was still pending a decree could be passed in the suit. An appeal against the decree was dismissed on November 28, 1964. A second appeal was dismissed by the

High Court on April 28, 1966. The present appeal has been filed by the tenant after obtaining special leave. The sole question in the appeal is whether in the circumstances there was a valid permission to institute the suit under Section 3 (1).

2. In *Bhagwan Das v. Paras Nath*, Civil Appeal No. 1617 of 1968, D/- 9-9-1968 (SC) this Court held that a suit validly instituted after obtaining permission of the Commissioner under Section 3 (3) did not become incompetent if the State Government acting under Section 7F revoked the permission after the institution of the suit. In that case the District Magistrate refused to give permission under Section 3 (1) to institute the suit. The Commissioner acting under Section 3 (3) set aside the order and granted permission to institute the suit. The suit was decreed by the Trial Court on November 2, 1960. The tenant filed an appeal against the decree. During the pendency of the appeal the State Government acting under Section 7F revoked the permission granted by the Commissioner. The Court held that though the order under Section 3 (3) was subject to an order under Section 7F the Government's power under Section 7F to revoke the permission granted by the Commissioner became exhausted once the suit was validly instituted.

3. In support of his contention that the present suit is not maintainable, the appellant relies on the following observations of Hegde, J.:-

"When the Commissioner sets aside the order passed by the District Magistrate granting permission to file a suit for ejecting in 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."

Having regard to these observations the present suit though validly instituted after obtaining the permission under Section 3 (1) became incompetent when the permission was revoked by the Commissioner under Section 3 (3). But the order under Section 3 (3) itself was set aside by the State Government under Section 7F during the pendency of the suit. The question is what is the effect of this order under Section 7F. Now, Section 3 (4) provides that the order of the Commissioner under Section 3 (3) is subject to an order passed by the State Government under Section 7F. If the State Government acting under Section 7F sets aside the order of the Commissioner revoking the permission, the order under Section 3 (1) granting permission is revived. The result is that there is an effective permission to institute the suit under Section 3 (1) and the suit is validly instituted.

4. In *Bhagwan Das's case*, Civil Appeal No. 1617 of 1968, D/- 9-9-1968 (SC) (Supra) the suit was validly instituted after obtaining permission from the Commissioner under Section 3 (3). The State Government could not render such a suit incompetent by any order under Section 7-F. In the present case the suit was validly instituted after obtaining permission from the Rent Control and Eviction Officer under Section 3 (1). The effect of the order of the Commissioner revoking the permission was that the suit became incompetent. The State Government acting under Section 7-F had power to revise and set aside the Commissioner's order and restore the permission granted under Section 3 (1)

so as to make the suit competent.

5. The order of the State Government after stating that in the interest of justice the house should be available to the landlord for his use, set aside the Commissioner's order under Section 3 (3). The result was that the order of the Rent Control and Eviction Officer passed under Section 3 (1) stood restored. The further direction in the order that the landlord "is advised to file a suit for eviction from the house in dispute against the opposite party in a Civil Court under Section 3 of the Act, which will be applicable four months after the date of the order" really means that the permission under Section 3 (1) would become effective on the expiry of 4 months. The landlord had thus an effective permission to institute the suit under Section 3 (1) on the expiry of four months from March 30, 1963, that is to say, as from July 30, 1963. The decree in the suit was passed on March 2, 1964. On that date the landlord had a valid permission to institute the suit. The suit was therefore maintainable.

6. In the result, the appeal is dismissed. There will be no order as to costs.

Appeal dismissed.