

Smt. Munni Devi and Another

Vs

Gokal Chand and Others

Civil Appeal No. 899 of 1966

(J. C. Shah, V. Ramaswami-I, A.N. Grover JJ)

12.09.1969

JUDGMENT

SHAH, J. –

1. Gokal Chand - first respondent in this appeal - was a tenant of Shop No. 34/2, Dispensary Road, Dehra Dun, which belongs to Munni Devi - the first appellant in this appeal. Munni Devi applied to the Rent Control and Eviction Officer, Dehra Dun, for an order in ejection on the plea that Gokal Chand had committed default in paying rent. The R.C. and E. Officer passed an order observing that the tenant did not lead any evidence to show that he had not vacated the shop and it was clear on the evidence that the tenant was not in occupation of the shop and had let it out to one Alladia. He accordingly declared that the shop was vacant.

2. The R.C. and E. Officer allotted the shop to Kishorilal. Kishorilal then applied to the R.C. and E. Officer that the shop allotted to him was in the illegal occupation of Rawal Chand son of Gokal Chand. On May 22, 1957, the R.C. and E. Officer declared that Gokal Chand the previous tenant had vacated the shop and that Rawal Chand was in illegal occupation of the shop. He accordingly issued a notice under Section 7-A(3) of the Act.

3. Gokal Chand then filed a civil suit in the Court of the Munsif, Dehra Dun, for a declaration that he was an allottee and a tenant of the shop and that he was in possession in that capacity. To that suit were impleaded Munni Devi and Kishorilal as party defendants. The Trial Court held that Gokal Chand had at no time vacated the shop, nor was his tenancy terminated. He accordingly made an order declaring that Gokal Chand was an allottee and a tenant of the shop and was entitled to remain in occupation of the same. An appeal against that order to the District Court was dismissed. A second appeal to the High Court was also unsuccessful.

4. In this appeal with special leave, counsel for Munni Devi and Kishorilal urges that the order of the civil court was without jurisdiction. Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, imposes certain restrictions on eviction of tenants. By Section 7(1)(a) it is provided :

"Every landlord shall, within 7 days after an accommodation becomes vacant by his ceasing to occupy it or by the tenant vacating it or otherwise ceasing to occupy it or by termination of a tenancy or by release from requisition or in any other manner whatsoever, give notice of the vacancy in writing to the District Magistrate."

Sub-sections (2) and (3) of Section 7 provide :

"(2) The District Magistrate may by general or special order require a landlord to let or not to let to any person any accommodation which is or has fallen vacant or is about to fall vacant.

(3) No tenant shall sub-let any portion of the accommodation in his tenancy except with the permission in writing of the landlord and of the District Magistrate previously obtained."

Section 7-A which was added by Act 24 of 1952 provides, in so far as it is material :

"(1) Where in pursuance of an order of the District Magistrate under sub-section (2) of Section 7, the vacancy of any accommodation is required to be reported and is not reported, or where an order requiring any accommodation to be let or not to be let has been duly passed under sub-section (2) of Section 7 and the District Magistrate believes or has reason to believe that any person has in contravention of the said order, occupied the accommodation or any part thereof, he may call upon the person in occupation to show cause, within a time to be fixed by him, why he should not be evicted therefrom :

#Provided X X X X##

"(2) If such person fails to appear in reply to the notice served under sub-section (1) or, if he appears but fails to satisfy the District Magistrate that the order under sub-section (2) of Section 7 was not duly passed and that he is entitled to remain in occupation of the accommodation the District Magistrate may, without prejudice to any other action which may be taken against him under this Act or any other law for the time being in force, direct him to vacate the premises within a period to be specified."

Section 16 of the Act provides :

"No order made under this Act by the State Government or the District Magistrate shall be called in question in any Court."

5. Counsel for the appellants urged that the suit filed by Gokal Chand was not maintainable, for the Act sets up a complete machinery for determining after enquiry whether any premises governed by the Act have fallen vacant, and for making an order calling upon the person or persons in wrongful occupation to vacate and deliver possession of the premises, and that by express enactment in Section 16, the order of the District Magistrate is declared final. We are unable to agree with that contention. Lord Esher, M.R., in *Reg v. Commissioner of Income-tax*, (21 QBD 313) observed :

"When an inferior court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The Legislature may entrust the tribunal or body with a

jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists, as well as the jurisdiction, and on finding that it does exist, to proceed further to do something more. When the Legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the facts including the existence of the preliminary facts on which the further exercise of their jurisdiction depends, and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

This rule was approved by this Court in *Ebrahim Aboobakar and Another v. Custodian-General of Evacuee Property*. ((1952) SCR 696).

6. *Munni Devi* applied for an order in ejectment against *Gokal Chand* on the plea that he had committed default in paying rent. The R.C. and E. Officer held that *Gokal Chand* had vacated the premises and had inducted a sub-tenant. The Legislature has invested the District Magistrate with power on the existence of a vacancy to allot the premises to another person, but the Legislature has not made the determination of the preliminary state of facts by the District Magistrate conclusive. The jurisdiction to pass an order in ejectment only arises if there is a vacancy. The right of a tenant in possession is a valuable right and there is nothing in Section 7 or Section 7-A which confers jurisdiction upon the District Magistrate to conclusively determine the facts on the existence of which his jurisdiction arises. Undoubtedly he had jurisdiction to make orders under Section 7 and 7-A of the Act, if there be a vacancy. But whether there is a vacancy is a jurisdictional fact which could not be decided by him finally. By reaching an erroneous decision, he cannot clothe himself with jurisdiction which he does not possess. It is only when the order is with jurisdiction that the order is not liable to be challenged in a Civil Court by virtue of Section 16 of the Act.

7. In *Chaube Jagdish Prasad v. Ganga Prasad Chaturvedi*, ((1959) Supp (1) SCR 733) the respondent had obtained on rent the "accommodation" in dispute from the appellant. The appellant submitted an application under Section 3-A of the U.P. (Temporary) Control of Rent and Evidence Act, 1947, to the House Allotment Office (on whom the power of the District Magistrate was conferred) for increase in rent. That Officer passed an order increasing the rent payable by the tenant on the ground that there was a new construction. The appellant then instituted a suit under Section 5(4) of the Act for the enhancement of "reasonable annual rent". The respondent contended, inter alia, that there was no new construction of "accommodation" after June 30, 1946 and that, therefore, the suit was not maintainable. The Trial Court found that there was a new "accommodation" and the Court could determine its rent under Section 5(4). In revision, the High Court held that though the construction was new, the "accommodation" in the occupation of the respondent was not new, and therefore Section 3-A of the Act was inapplicable. In appeal, this Court held that a wrong decision made by the House Allotment Officer who exercised the power of the District Magistrate under Section 3-A of the Act or an order made by him in excess of his power under that section could be rectified by a suit under Section 5(4) of the Act.

8. In the present case the civil court has come to the conclusion that *Gokal Chand* had never vacated the shop and no vacancy had occurred. By wrongly deciding that *Gokal Chand* had vacated the shop, the District Magistrate had no power to pass orders directing forcible ejectment and allotting

the shop to another person.

9. The appeal fails and is dismissed with costs.

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