Seth Balgopal Das

Vs

The State of U. P. and Others

Civil Appeal No. 222 of 1975

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

08.04.1976

JUDGMENT

BEG, J. -

1. The appellant, here by special leave, is a tenant of premises in Dehradun in respect of which the landlord respondent No. 4 had sought permission, under Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act III of 1947 (hereinafter referred to as 'the Act'), to sue for his eviction. The permission was granted by the Rent Control and Eviction Officer, Dehradun, as long ago as August 11, 1969, and, thereafter, the suit for ejectment of the appellant was filed on November 19, 1969.

2. Section 3, sub-section (1) of the Act had merely imposed a bar on suits in civil courts filed without the permission of the District Magistrate except on certain grounds which are given there. The plaintiff-respondent, one Mr. Sheila Kalha, wife of a retired army officer, was given permission to file her suit on the ground that she required the accommodation for personal residence. She is said to have been living at considerable expense to her at New Delhi due to inability to live in her own house at Dehradun as it has been occupied by the appellant.

3. The tenant had applied on August 19, 1969, for a certified copy of the order of the Rent Control Officer granting the landlord permission to sue and got its copy on August 25, 1969. Thereafter, the tenant filed a revision application under Section 3(2) of the Act, purporting to be made to the Commissioner, Meerut Division, but actually filed on September 16, 1969, before an Additional District Magistrate of Dehradun who had forwarded it on the Commissioner. The revision application was received in the Commissioner's office on September 24, 1969. It was rejected by the Commissioner on the ground that it was filed beyond the time prescribed by Section 3(2) of the Act which reads as follows :

> (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 to grant 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.

4. This State Government also rejected the revision application of the appellant tenant, filed under Section 7F of the Act, against the Commissioner's order.

5. The appellant tenant then approached the Allahabad High Court with a petition under Article 226 of the Constitution. The petition was rejected by a learned Judge on October 31, 1972, on two

grounds : Firstly, that there was no provision in the Act or in the rules framed thereunder for enabling the Additional District Magistrate to receive the tenant's application under Section 3(2) Act; and, secondly, that the time spent on obtaining the certified copy of the District Magistrate could not be excluded under Section 12(2) of the Limitation Act of 1963. For the second proposition reliance was placed upon : Shyam Sunder Bajpai v. Commissioner, Allahabad Division, Allahabad (1965 ALJ 211) and Ram Lakhan v. Commissioner, Varanasi Division, Varanasi (1970 ALJ 909)

6. A Division Bench of the Allahabad High Court had rejected the tenant's special appeal summarily. This Court, however, granted special leave to appeal under Article 136 of the Constitution on July 28, 1975. We need not express any opinion on the correctness of the second proposition here if we agree with the High Court's view on the first point because, in that case, the tenant's application would be timebarred even if the time spent in obtaining the copy was excluded.

7. The only contention, put forward by Mr. B. Sen on behalf of the tenant-appellant on the first point, is that there is a practice in Dehradun, acting on some instruction of the Commissioner, Meerut Division, to received revision applications to the Commissioner through an Additional District Magistrate of Dehradun, who has, therefore, the Commissioner's authority' to receive these applications. It was urged that the filing of the revision application before an Additional District Magistrate should be deemed, in these circumstances, to be sufficient compliance with the requirements of Section 3(2) of the Act which provides, as is clear from a bare look at it, that the revision application lies before the Commissioner.

8. It is difficult to see how a practice could possibly modify the provisions of the Act. There is not even a rule on this subject made by the State Government under the provisions of Section 17 of the Act which authorises the Government too "make rules to give effect to the purpose of this Act". There are rules on other matters but not on such a matter.

9. Mr. B. Sen relied on a Division Bench decision of the Allahabad High Court in F. C. Pasricha v. State of U. P. (Special Appeal No.744 of 1971 decided on April 5, 1973 (All), where it was held :

> It appears that the Commissioner had authorised the District Magistrate to receive revisions meant for him. By so authorising, the Commissioner was only indicating the place and, the manner of representation of the revisions. Since the Rent Control Act did not either by itself or rules framed under it lay down the precise procedure in regard to the presentation of the revision, the Commissioner who was the authority entitled to entertain and decide the revisions was within his rights to prescribe the procedure in respect of presentation of the revisions. The direction given by the Commissioner in 1946 with regard to the presentation of revision was valid and enforceable.

10. In Pasricha's case, the Single Judge decision in Seth Bal Gopal Das v. State of U. P. (1973 ALJ 120) on the case now before us, was noticed by the Division Bench and distinguished on the ground that there was no evidence here to prove that there was any such practice. Both Pasricha's case and the case now before us come from the Dehradun district. We think it is difficult to reconcile the Division Bench decision in Pasricha's case, decided on April 5, 1973, with the summary rejection of the Special Appeal No. 189 of 1973 on August 8, 173, which is under appeal before us, although we find that one of the learned Judges is common to both the Division Benches.

11. We prefer the reasoning of the learned Single Judge in Seth Bal Gopal Das v. State of U. P. to the reasoning of the Division Bench in Pasricha's case. A wrong practice cannot possibly modify what naturally and logically follows from the language in Section 3(2) of the Act. This provision says that the party aggrieved must "apply to the Commissioner to revise the order." The natural inference is that the party must apply to the Commissioner directly and not through some other authority or official.

12. It is true that Section 3(2) does not prescribe the manner and place of presentation of applications. But, unless there is some rule made to confer authority, upon the District Magistrate or the Additional District Magistrate concerned or his office, to act as the agent of the Commissioner, or a clear and specific authorization by the Commissioner is proved, we fail to see how filing a revision application before the Additional District Magistrate can be deemed to amount to making the application to the Commissioner.

13. In Pasricha's case, the Division Bench had gone to the extent of holding that some communication made by the Commissioner in 1946 to the District Magistrate of Dehradun, even a copy of which was not placed, before the court, could be shewn by means of an affidavit of a party, to have been both established and to be enough to confer an authority on an Additional District Magistrate of Dehradun to receive applications on behalf of the Commissioner under the provisions of Section 3(2) of the Act which were introduced after 1946 according to the statement of facts in Pasricha's case itself. Prima facie, an authorisation cannot relate to a power or right conferred by a provision which could not be present to the mind of the Commissioner at all at the time when he is supposed to have made some communication to the District Magistrate as the provision for a revision in such a case did not even exist then. We, therefore, think that the reasoning of the Division Bench in Pasricha's case is unacceptable. The alleged practice cannot be held to have been even established. And, in any event, such a practice was not enough to confer authority to receive petitions on behalf of the Commissioner. For that purpose, proof of at least specific authorisation by the Commissioner, after the introduction of the new provision, was required.

14. The result is that we are unable to find any merit in the case of the appellant who has been able to hold up proceedings for his eviction long enough in respect of accommodation which, on the allegations made on behalf the landlord (this term includes the "landlady"), has been required to meet the landlord's dire personal needs, since at least 1969. We hope that the trial of the suit in such a case will not be delayed now.

15. We dismiss this appeal with costs throughout.

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