

Kanta Gupta

Vs

VIII Additional District Judge, Meerut and Others

I.A. Nos. 5 and 6 of 1990 In Contempt Petn. No. 17 of 1990 In Civil Appeal No. 2590 of 1987

(M.N. Venkatachaliah, K.N. Saikia JJ)

ORDER

1. The litigative resourcefulness of the parties in this case appears inexhaustible. By consent order dated 17-12-87 made by this Court in Civil Appeal No. 2950/87, the appellant Smt. Kanta Gupta who had secured an Order of allotment as tenant under the provisions of the U.P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act 1972 in respect of the premises concerned in the proceedings, undertook to yield-up and deliver vacant possession of the premises to the landlords on the expiry of two years from 17-12-1987. The order was accompanied by a written undertaking filed by Smt. Kanta Gupta to act in aid of its terms.

2. Later her husband, Bhagwan Das, attempted to assert certain rights of his own for possession on the basis of some partnership. Appellant sought to urge that in view of this claim of her husband her own obligations under the consent order and the undertaking amount only to an obligation merely to declare that she had ceased to have any interest in the premises and that she had no obligation to yield-up vacant possession. In the contempt petition No. 17/90 moved by the landlords for disobedience of the undertaking the claims of Bhagwandas were negatived; appellant was held to be in actual physical possession and was directed to yield-up vacant possession on or before 30-10-90;

3. Now it is the turn of the appellant's brother Sri Trilok Chand to appear on the scene and attempt to dispute the entitlement of the landlords for the benefit of the order dated 17-12-1987. The case of Trilokchand appears to be that under certain anterior transactions of partnership he was actually in possession of the premises at the time of delivery of possession of the premises to the appellant pursuant to the order of allotment; that as he had delivered possession redelivery by the appellant should enure to his own benefit and that possession should not be delivered to the landlords in terms of orders dated 17-12-1987 and 5-9-1990.

The sequence of transactions including the one relied upon by applicant - Trilokchand is referred to in the order dated 5-9-1990 made in the contempt proceedings. Though Trilok Chand was not eonimine a party to the contempt proceedings there is, in our opinion, sufficient material on record to suggest that Trilokchand's own interest was not adverse to, but only in concert with that of his sister, the appellant and her husband. At one stage Trilok Chand had himself instituted a suit claiming to be in possession of the premises on the basis of the alleged partnership and seeking possessory remedy to protect that alleged possession. That suit was abandoned by him after the allotment of the premises in favour of the appellant. Now, he seeks to have those old, and perhaps, extinguished claims agitated in the suit rekindled. The overwhelming impression that these successive attempts would give is that appellant, her husband and now her brother are blending all their energies in an attempt to defeat the order dated 17th December, 1987. This should not be countenanced.

Even if the allegation that Trilokchand had been in possession prior to the order of allotment is true, that by itself, prima facie, does not substitute him to the position of the landlords, particularly when he, on his own admission, admits that he gave up possession so that appellant may be inducted into possession as a tenant of the landlord. If Trilokchand cannot maintain an action for eviction against appellant he cannot, by the same token, claim resumption of possession pursuant to an order granting possession to the landlord. The title of the landlord is not disputed.

4. If Trilok Chand fancies himself to be or is entitled to any rights, it is open to him to institute such appropriate separate proceedings according to law to work out his alleged rights as may be open to him. But that cannot come in the way of the effectuation of the order dated 17th December 1987 of this Court directing the appellant to put the landlords in actual physical possession. The present applications of Trilokchand required to be and are, accordingly, dismissed.

5. The Additional District Magistrate, Meerut, is directed to ensure the enforcement and effectuation of the order dated 5th September 1990 made in Contempt Petition No. 17 of 1990 in strict terms of that order and make a report to this Court of compliance. The Additional District Magistrate shall act upon a certified copy of the order to be filed before him by the landlords. After the delivery of possession the Additional District Magistrate shall also ensure that the possession of the landlord is not otherwise interfered with by Smt. Kanta Gupta, Sri Bhagwan Das or Sri Trilok Chand or their servants or agents, otherwise than in accordance with law. After delivery of possession, the appellant, her husband and her brother Trilok Chand shall be restrained from interfering with the possession of the landlords otherwise than in accordance with law. Dasti service of this order as well as the one dated 5-9-1990 to the Additional District Magistrate is permitted.

Order accordingly.

</html