

# ALLAHABAD HIGH COURT

Bansilal Sahu

Vs.

Prescribed Authority

Civil Misc. Writ No. 1995 of 1977

(Satish Chandra, C.J., K.N. Seth and K.C. Agrawal, JJ.)

08.01.1980

## JUDGEMENT

### **Satish Chandra, C.J.**

1. A Division Bench felt unable to follow the law laid down by another Division Bench in *Smt. Sarju Devi v. Prescribed Authority, Kanpur* <sup>1</sup> It has referred the following question of law to a larger Bench. \

"Whether the Prescribed Authority, while exercising jurisdiction under clause (rr) of Section 43(2) of the 1972 Act, has jurisdiction to take subsequent events into consideration or to modify the permission granted under Section 3 of the 1947 Act and to evict a tenant from a portion of the building even though permission may have been granted in respect of the entire building ?"

2. Section 43 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 deals with repeal and savings. By Sub-Section (1), it repeals the U.P. (Temporary) Control of Rent and Eviction Act, 1947, Sub-Section (2) provides :-

"(2) Notwithstanding such repeal -

(rr) Where any permission referred to in Section 3 of the old Act has been obtained on any ground specified in Sub-Section (1) or Sub-Section (2) of Section 21, and has become final, either before the commencement of this Act, or in accordance with the provisions of this Sub-Section, after the commencement of this Act, whether or not a suit for the eviction of the tenant has been instituted the landlord may apply to the prescribed

authority for his eviction under Section 21, and thereupon the prescribed authority shall order the eviction of the tenant from the building under tenancy, and it shall not be necessary for the prescribed authority to satisfy itself afresh as to the existence of any ground as aforesaid, and such order shall be final and shall not be open to appeal under Section 22."

3. The conditions for the application of clause (rr) are :-

- (a) permission under Section 3 of the old Act, namely Act of 1947, has been granted and has become final;
- (b) the permission has been granted on any ground specified in Sub-Section (1) or Sub-Section (2) of Section 21 of this Act.

4. Then, if the landlord applies for the eviction of the tenant under Section 21, the Prescribed Authority shall order his eviction from the building under tenancy.

5. It is noticeable that the jurisdiction of the Prescribed Authority is to order the eviction of the tenant from the building under tenancy. It has not expressly been conferred any power to order eviction from a portion or part of the building under tenancy.

6. The opening clause of this provision entitles the Prescribed Authority to find that the permission under Section 3 of the Old Act has been obtained on any ground specified in Sub-Section (1) or Sub-Section (2) of Section 21 of the present Act and that the same has become final. This is the beginning as well as the end of his jurisdiction to record findings. If the conclusion is in the affirmative it has no discretion but to order the eviction of the tenant from the building under tenancy.

7. This leads us to Section 21, Section 21 provides :-

"21. Proceedings for release of building under occupation of tenant (1)  
The Prescribed Authority may, on an application of the landlord in that behalf order the eviction of a tenant from the building under tenancy or

any specified part thereof if it is satisfied that any of the following grounds exists namely....."

8. Then follow the grounds. They are given in clauses (a) and (b). Clause (a) deals with *bonafide* requirement of the landlord. Clause (b) refers to the building being in a dilapidated condition and is required for purposes of demolition and new constructions. Sub-Section (2) mentioned the grounds for eviction from any surplus land appurtenant to the building under tenancy. In that event eviction of the tenant could be ordered from the surplus land.

9. Under Section 21(1) of the Act, if the Prescribed Authority is satisfied that the grounds mentioned in it exist, it has jurisdiction to order the eviction of the tenant 'from the building under tenancy' or 'any specified part thereof'.

10. The landlord has to satisfy the prescribed Authority that the grounds mentioned in Section 21 exist. On such satisfaction having been reached, the Prescribed Authority has jurisdiction to consider the further question whether in order to satisfy the ground alleged and established by the landlord the eviction of the tenant be ordered from the building under tenancy or any specified part thereof. The two stages of the enquiry are distinct and separate.

11. The question whether the eviction of the tenant be ordered from the building under tenancy or any specified part thereof, is obviously not determination of the existence of the grounds specified in Sub-Section (1) or Sub-Section (2) of Section 21. Clause (rr) does not authorize the Prescribed Authority to go into this question or determine it.

12. On the other hand, clause (rr) takes special care to provide that the Prescribed Authority shall not reopen the first question either, namely to satisfy itself all over again as to the grounds. The last part of clause (rr) says :-

"and it shall not be necessary for the Prescribed Authority to satisfy itself afresh as to the existence of any ground as aforesaid."

In the scheme of clause (rr), it is apparent that the phrase 'it shall not be necessary' means 'it shall not be open'. In other words, the Prescribed Authority,

has no jurisdiction to reopen the question and satisfy itself afresh that the grounds specified under Sub-Section (1) or Sub-Section (2) of Section 21 do exist. In this respect, the order granting permission under Section 3 of the old Act is final and conclusive. Its jurisdiction is only to see that the grounds on which the permission was obtained answer the description of the grounds specified under Sub-Section (1) or Sub-Section (2). If it is so satisfied, then it has no option but to order eviction of the tenant 'from the building under tenancy'.

13. If the Legislature had intended to confer jurisdiction on the Prescribed Authority to order the eviction of the tenant from any specified part of the building under tenancy, it would have added the phrase 'or any specified part thereof' after the phrase 'from the building under tenancy' occurring in cl.(rr), just as it has done in Section 21(1).

14. The conclusion seems irresistible that the Prescribed Authority has no power to consider the question whether the grounds shall be satisfied by ordering the eviction of the tenant from any specified part of the building under tenancy.

15. We have to keep in mind that clause (rr) of Section 43 operates notwithstanding the repeal of the old Act of 1947. It provides for satisfaction of the order of permission granted under Section 3 of the old Act by the speedier method of eviction under Section 21 of the present Act. Under the old Act of 1947, the landlord after obtaining permission under Section 3 of that Act had to file a suit for eviction of the tenant. Clause (rr) of Section 43(2) provides a speedier remedy, no matter whether a suit had been instituted.

16. Under the old Act of 1947, permission could be granted in relation to the building under tenancy. The District Magistrate had no power to grant permission only in respect of any specified part thereof. Under that Act, a suit had to be filed for the eviction of the tenant on the basis of the permission. The suit naturally extended to eviction from the building under tenancy. It could not be for eviction from any specified part of the building under tenancy. Clause (rr) of Section 43 provides a speedier remedy for the same relief. To achieve the same relief, it specifically says that 'the prescribed authority shall order the

eviction of the tenant from the building under tenancy'.

17. For the tenant it was submitted that under clause (rr), the Prescribed Authority can take into account subsequent events in order to satisfy itself that the ground on which the permission was obtained under the old Act will be satisfied by ordering eviction from any specified portion of the building.

18. Clause (rr) operates as a substitute for a suit for eviction based on the permission granted under the old Act. Acceptance of the submission on behalf of the tenant would result in non-use of clause (rr) in many cases. Under cl.(rr), as construed on behalf of the tenant, the Prescribed Authority will have jurisdiction to order eviction from any specified part of the building. No landlord is going to take the risk of applying under Section 21 read with clause (rr) of Section 43(2) for the eviction of a tenant, because then he would run the risk of his attempt being rendered futile in getting the entire building suit (sic). In that event, clause (rr) would become an illusory provision. The object of providing speedier relief of eviction of the tenant to such landlords would become nugatory and the object of clause (rr) would stand defeated. Such an intention cannot be imputed to a same legislature.

19. In our view, the question whether the eviction of the tenant has to be ordered from any specified part of the building under tenancy is not within the jurisdiction of the Prescribed Authority, while acting under clause (rr), irrespective of the occurrence of subsequent events which may make it improper to order the eviction from the entire building, or which may tend to establish that the need set up by the landlord can be satisfied by ordering eviction of the tenant from a specified part of the building under tenancy.

20. In *Tara Chand Khandelwal v. Prescribed Authority, Agra*,<sup>2</sup> it was held that subsequent events or facts cannot be considered and the Prescribed Authority is bound to order eviction according to the permission. This case lays down the law correctly.

21. We may now consider the case of Smt. Sarju Devi (supra) which has caused this reference.

22. When an application is made under Section 21, the Prescribed Authority has to satisfy itself that the grounds mentioned in Section 21(1) and (2) exist. It then considers whether the established grounds can be satisfied by ordering eviction either from the whole or part of the accommodation. But, under cl.(rr), the second part of the enquiry is forbidden.

23. In Smt. Sarju Devi (supra), the Division Bench observed :-

"Consideration of relative hardship to the landlord and the tenant, may also persuade the Prescribed Authority not to order eviction of the tenant from the entire house, but to order his eviction from a portion of the house. When such is the legal position when the landlord makes an application for the first time under Section 21 of the Act, we do not see why the legal position should be different under clause (rr) of Section 43(2) of the present Act. The words 'shall order the eviction of the tenant from the building under tenancy' should, in our opinion, be read as 'shall order eviction of the tenant from the entire building or any portion thereof.'"

In the aforesaid case, the Division Bench equated the jurisdiction of the Prescribed Authority while deciding an application under Section 21 of the present Act with the jurisdiction it has been conferred for giving effect to the permission granted under Section 3 of the old Act. As explained above, the two situations are different. Clause (rr) specifically prohibits the Prescribed Authority from satisfying itself afresh that the grounds exist. It has only to see that the grounds on which permission was granted under the old Act are such as answer the description of the grounds mentioned in Sub-Section (1) or (2) of Section 21. It has no power to satisfy itself as to any other matter. While disposing of an application under Section 21(1), it has an additional jurisdiction to decide whether the grounds established by the landlord require eviction from the whole or a part of the building. This latter jurisdiction has not been given to the Prescribed Authority while dealing with an application under clause (rr) for eviction of the tenant on the basis of the permission granted under the old Act. That is why the two situations cannot be equated. The Division Bench, if we may say so with respect fell into an error in overlooking this distinction. We are unable to approve the decision in Smt. Sarju Devi.

24. On facts, it is undisputed that the landlord was granted permission under Section 3 of the old Act. It was in respect of one of the grounds mentioned in Section 21, and that the permission became final. The Prescribed Authority when approached under Section 21 read with Section 43(rr) of the present Act refused to consider subsequent events and directed the petitioner's eviction from the entire shop vide order dated November 2, 1977. The order was in law justified.

25. We answer the question referred to us in the negative against the petitioner and in favor of the respondents.

Answered in negative.

Cases Referred.

1. (1977 All LJ 251)
2. (1976 All LJ 708)