
(1971) 04 AHC CK 0023
In the Allahabad High Court
Case No : Special Appeal No. 41 of 1969

Baleshwar Dayal	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 01-04-1971

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7F

Citation : AIR 1970 All 12 : (1971) 41 AWR 303

Hon'ble Judges : W. Broome, J;R.S. Pathak, J;H.N. Seth, J

Bench : Full Bench

Advocate : V.B.L. Srivastava, Ambika Pd., M.P. Srivastava, Jagdish Pd. and G.C. Dwivedi, for the Appellant; A.D. Prabhakar, for the Respondent

Final Decision : Disposed Of

Judgement

H.N. Seth, J.—A Division Bench of this Court has referred two questions of law for consideration by a Full Bench. Facts leading to the reference are that on 29-1-1965. Ram Kishan and Babu Ram, the two landlords, obtained permission u/s 3 of the U. P. Temporary Control of Rent and Eviction Act (U. P. Act III of 1947), hereinafter referred to as the Act, from the Rent Control and Eviction Officer, Meerut, for filing a suit for ejectment against their tenant Baleshwar Dayal. The tenant went up in revision before the Commissioner, Meerut Division, who by his order dated July 22, 1965 dismissed the revision application and upheld the order of the Rent Control and Eviction Officer. On 3rd August 1965, the tenant filed an application in revision u/s 7-F of the Act, before the State Government. The State Government, by its order dated 6th August, 1965 directed that the operation of the permission granted, u/s 3 of the Act, by the Additional Commissioner. Meerut Division, to Sarvasri Ram Kishan and Babu Ram to file a suit for Baleshwar Dayal's ejectment from the shop in question, be stayed pending consideration of the case by the State Government. Before the order dated 6th August 1965 could be served upon the two landlords, they filed a suit for the ejectment of the tenant on 16th August, 1965. Subsequently, on 17th of

May, 1966 the State Government dismissed the revision application filed by the tenant on the ground that it was not open to it to interfere with the permission granted u/s 3 of the Act after a suit for ejectment had been filed. The tenant then filed a writ petition against the order of the State Government, dated 17th of May, 1966, dismissing his revision application. The writ petition was dismissed by a learned single Judge of this Court. Baleshwar Dayal questioned the correctness of the order made by the learned single judge by filing a special appeal. During the hearing of the special appeal, reliance was placed on a Division Bench decision of this Court in the case of Smt. Bhagwati Devi v. Baij Nath 1966 A WR 631 in which it had been held that powers of the State Government u/s 7-F of the Act, are wide enough to enable it to pass stay orders during the pendency of the revision before it, and that the stay order passed by it would operate from the date it is made. Learned Judge hearing the Special Appeal, felt that the decision in Smt. Bhagwati Devi's case 1966 AWR 631 required reconsideration and accordingly they referred the following two questions for being considered by a Full Bench.

- (1) Whether the State Government has get power to pass a stay Order 2 and
- (2) Whether the stay order operates from the moment of its birth or from the moment of its communication to the landlord to whom permission has been granted.

2. Section 7-F of the Act reads as follows:

"The State Government may call for the record of any case granting or refusing to grant permission for the filing of a suit for a eviction referred to in Section 3 or requiring any accommodation to be let or not be let to any person u/s 7 or directing a person to vacate any accommodation u/s 7-A and may make such order as appeared to it necessary for the ends of justice."

3. The power given to the State Government under this section is in very wide and general terms. After the State Government calls for the record under this section, it gets the jurisdiction to make such orders as may appear to it necessary in the ends of justice. This power in our opinion includes the power to make interim orders which may appear to the State Government to be necessary in the ends of justice. There does not seem to be any reason to confine the jurisdiction of the State Government to the making of final orders alone. It is a well recognised principle of interpretation of statutes that where a statute confers a power on an authority, such ancillary or incidental powers must be implied as are necessary for the effective and complete exercise of that power. The Kerala High Court acted upon this principle in the case of M. K. Mohammed Kunhi Vs. Income Tax Officer, Cannanore, and Another, held that the Income Tax Tribunal has the power to stay recovery of tax pending the disposal of an appeal before it; and, although such power is not expressly provided under the Act, it is ancillary and incidental to the appellate powers of the Tribunal. This decision of the Kerala High Court has since been affirmed by the Supreme Court in appeal. Such a

power to make interim order will be more readily inferred in a case where the jurisdiction to make order has been worded in such wide language as in Section 7-F of the Act.

4. It cannot be disputed that u/s 7-F of the Act, the State Government has the power to revoke the permission, granted u/s 3 of the Act, to file a suit for ejectment of a tenant. In the case of Mohammed Ismail Vs. Nanney Lal, it has been held by Supreme Court that the State Government can exercise its jurisdiction to revise the order of the Commissioner only before the actual institution of the suit. Once the State Government summons the record u/s 7-F of the Act the power to make orders with the view to make it certain that it may be able to pass an appropriate and effective order must per necessity be conceded to it. Prima facie such an order would be necessary to be made to secure the ends of justice. We have, therefore, no hesitation in concluding that u/s 7-F of the Act the State Government can make such interim orders which are calculated to prevent its jurisdiction becoming infructuous.

5. It is also clear that orders u/s 7-F of that Act can be addressed to only such persons or authorities over whom the State Government has jurisdiction under the Act. It can therefore require such persons or authority not to take steps in pursuance of an order which is being questioned before it.

6. In order to determine as to when an interim order made by the State Government takes effect, it would be necessary to find its real nature. In substance it is an order staying further proceedings before an authority amenable to the jurisdiction of the State Government, it will take effect from the time it is communicated to the authority concerned as per decision of the Supreme Court in the case of Mulraj Vs. Murti Raghonathji Maharaj, . If on the other hand, it is of the nature of an injunction order, it is equally well settled that it will take effect from the time it is communicated to the person concerned. In order to determine as to when an interim order, made by the State Government, staying the permission granted u/s 3 of the Act will take effect, it is necessary to look to its substance and to find out its real nature. It is obvious that such an order cannot be construed as a direction to a Civil Court or to any other authority to stay further proceedings in pursuance of the impugned order. As under the Act a Civil Court is not amenable to the jurisdiction of the State Government, the State Government will have no jurisdiction to make an order staying further proceedings before it. Once a permission to file a suit for ejectment of a tenant has been granted, no further proceedings for its enforcement, before any authority which is amenable to the jurisdiction of the State Government, are contemplated. In the circumstances it is not possible to construe an interim order, as has been made in the present case, as an order directing stay of further proceedings before any court or authority.

7. The only purpose and effect of an order granting permission u/s 3 of the Act to file a suit for ejectment is to remove the bar imposed by the Act on the right of a landlord to institute a suit for the ejectment of a tenant. Once permission is

granted and the bar is removed, there remains nothing on which permission can operate any further. In this view of the matter, once the permission is granted and the bar is removed, the permission exhausts itself, and no question of staying its operation as such arises. In the circumstances, the only proper way to construe such an order is to treat it as an injunction issued to the landlord restraining him from filing a suit for the ejection of the tenant. Since the order partakes the nature of an injunction order, it can become effective only from the time it is communicated to the party, which is sought to be restrained,

8. We accordingly answer the two questions referred to us as follows:--

(1) While exercising the powers u/s 7-F of the U. P. Act III of 1947, the State Government has the jurisdiction to pass interim orders, including stay orders, which it may consider necessary in the interest of justice. Making of such interim orders which enable the State Government to make an effective final order u/s 7-F would be within its jurisdiction. Such interim orders can be directed only to such persons or authorities which are amenable to the jurisdiction of the State Government in proceedings under the Act, and

(2) An interim order staying the operation of permission granted by the District Magistrate u/s 3 of the Act is in substance an order restraining the landlord from instituting a suit and it becomes effective only from the time it is communicated to the party concerned.