

(1973) 04 AHC CK 0021
In the Allahabad High Court
Case No : Special Appeal No. 769 of 1971

Brij Bhushan Lal Bansal

APPELLANT

Vs

Nathu Ram and Others

RESPONDENT

Date of Decision : 23-04-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3, 43(2)

Citation : AIR 1973 All 505 : (1973) 43 AWR 661

Hon'ble Judges : Satish Chandra, J; N.D. Ojha, J

Bench : Division Bench

Advocate : N.C. Rajvanshi, for the Appellant; A.D. Prabhakar, for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, J.—The appellant is the owner of an accommodation of which the respondent No. 1 is a tenant. The appellant made an application for permission u/s 3 of U. P. Act in of 1947 to file a suit for ejectment of respondent No. 1. The permission was refused by the Rent Control and Eviction Officer but on a revision having been filed by the appellant, the Commissioner allowed the application and granted the necessary permission. This order was upheld by the State Government u/s 7-F of the aforesaid Act. The respondent No. 1 instituted a writ petition in this Court which has been allowed by a learned Single Judge on the ground that neither the Commissioner nor the State Government compared the needs of the landlord and the tenant as required of them and consequently their orders were vitiated. The landlord has now filed this special appeal.

2. Learned counsel for the appellant has not been able to satisfy us that either the Commissioner or the State Government had compared the needs of the landlord and the tenant and consequently on this ground the judgment of the learned Single Judge is unassailable.

3. Learned counsel for the appellant further urged that after the grant of the

permission by the Commissioner the appellant has already filed a suit for ejectment of respondent No. 1 and as such the orders of the Commissioner and the State Government could not have been quashed. We are, however, not impressed by this argument. The mere fact that a suit has been filed by the landlord after the grant of permission by the Commissioner does not in any way affect the jurisdiction of this Court under Article 226 of the Constitution to quash the order of the Commissioner in case the said order is found to be manifestly erroneous in law.

4. Learned counsel for the appellant relied on two decisions of the Supreme Court reported in *Bhagwan Das Vs. Paras Nath*, and *Mohammed Ismail Vs. Nanney Lal*, In the case of *Bhagwan Das Vs. Paras Nath*, , it was held that a suit validly instituted after obtaining permission as required by Section 3 (1) of the U. P. (Temporary) Control of Rent and Eviction Act does not cease to be maintainable even if the State Government revokes, after the institution of the suit, the permission granted. If the State Government revokes the permission granted before the Institution of the suit then there would be no valid permission to sue. In other words, the State Government's power to revoke the permission granted u/s 3 (1) gets exhausted once the suit is validly instituted. In the case of *Mohammed Ismail Vs. Nanney Lal*, , it was held that an order u/s 7-F passed by the State Government cancelling the permission to sue given by the Commissioner cannot affect a suit filed prior thereto if the landlord had obtained the necessary sanction from the Commissioner. Jurisdiction u/s 7-F is only exercisable at a point of time anterior to the filing of a suit and Courts of law can, therefore, disregard any order under that section which is made after the filing of a suit.

5. It would thus be seen that the cases referred to above only deal with the power of the State Government u/s 7-F to pass an order after a suit has already been filed in pursuance of the permission granted by the Commissioner. These cases do not hold that the power of this Court under Article 226 of the Constitution is in any way rendered infructuous by the mere fact that the suit has been filed by the landlord in pursuance of the permission granted by the Commissioner. The submission made by the learned counsel in this behalf therefore also fails.

6. Before parting with the special appeal, however, it is to be pointed out that since after the decision of the learned Single Judge the U. P. (Temporary) Control of Rent and Eviction Act has been repealed and the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 has been enacted which has come into force with effect from 15th of July, 1972. The judgment of the learned Single Judge is dated 5-11-1971. As a result of the orders of the Commissioner and of the State Government being quashed, the revision filed before the Commissioner became pending on 5-11-1971. Section 43 (2) (m) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 provides:

"Any revision relating to the grant of permission u/s 3 of the old Act pending immediately before the commencement of this Act before the Commissioners shall stand transferred to the District Judge, and his decision shall be final."

As already pointed out above, as a result of the judgment of the learned Single Judge the, revision before the Commissioner became pending on 5-11-1971 and was thus pending immediately before the commencement of the Act aforesaid. In view of the aforesaid provision the revision has now to be decided by the District Judge. The Commissioner will, therefore, transfer the revision pending before him to the District Judge who shall dispose it of in accordance with law and in the light of the observations made above.

7. In the result, the appeal fails and is dismissed subject to the observations made above. There will be no order as to costs.