
(1950) 10 AHC CK 0016
In the Allahabad High Court
Case No : First Appeal No. 118 of 1950

Ghanshyamdass Bhagat and Another	APPELLANT
Vs	
L. Gulab Chand and Others	RESPONDENT

Date of Decision : 04-10-1950

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 10, 3

Citation : AIR 1952 All 624

Hon'ble Judges : Sankar Saran, J; Bind Basni Prasad, J

Bench : Division Bench

Advocate : J. Swarup, for the Appellant; Walter Dutt, for the Respondent

Final Decision : Dismissed

Judgement

Bind Basni Prasad J.

1. This is a plff.'s appeal from the judgment of the learned Civil Judge of Agra dated 31-1-1950. The relevant facts are as follows : The plff. is the deft.s" tenant in a house situate in the City of Agra. In 1945 & 1947 the defts. unsuccessfully applied to the District Magistrate for permission to evict the plff. from the house. He made a third application in 1948 & on 22-7-1948, the District Magistrate passed the following order:

"This is an application for permission to eject through the Civil Court Ghanshiamdass a tenant of the applicant's house. An application by the same parties was made in 1945 & rejected. A second application, was made again in 1947 & was rejected on 18-11-1917. The applicant himself is occupying another man's house for his business & an application has now been made for permission to eject him. Under the circumstances permission is accorded to eject him, Ghanshiam Dass through the Civil Court."

After the grant of this permission, the tenant (the plff. in the present case) brought a suit (No. 122 of 1948), from which this appeal arises, on 31-8-1948, in the Court of the Civil Judge at Agra, for a declaration that the aforesaid order

of the District Magistrate was null & void & ineffectual so as to enable the landlords to eject him. Near about the same time, the landlords brought a suit for ejectment against the tenant (Suit No. 724 of 1948) in the Court of the Munsif of Agra. This was transferred to the Court of the Civil Judge & both the suits were heard together by him. He dismissed the tenants' suit, but decreed the landlords' suit. The tenant, therefore, comes in appeal as against the decree passed in suit No. 122 of 1948. An appeal is pending in the Court of the District Judge at Agra from the decree passed in suit No. 724 of 1948. The appellant made an application for the transfer of that appeal to this Court, but it was rejected.

2. No evidence was adduced in the Court below. The question is mainly one of interpretation.

3. During the War there was difficulty about accommodation & Orders were made, firstly, under the Defence of India Rules to restrict the rights of landlords under the Transfer of Property Act for the ejectment of the tenants. With the lapse of the Defence of India Rules, those Orders ceased & then Ordinances were made making provisions to the same effect. Ultimately, the Ordinances were replaced by the U. P. (Temporary) Control of Rent & Eviction Act, 1947 (Act III [3] of 1947). The second para, of the Preamble of this Act provides as follows :

"And whereas due to the shortage of accommodation in the United Provinces it is expedient to provide for the continuance during a limited period of powers to control the letting & the rent of such accommodation & to prevent the eviction of tenants therefrom."

4. Section 3 of the Act provides for restriction of eviction. Under the Transfer of Property Act a landlord has, subject to his giving notice, an unfettered right to evict a tenant, not being a tenant for a term. That freedom was restricted by Section 3 of the Act in the following words :

"8. No suit shall, without the permission of the District Magistrate, be filed in any civil Court against a tenant for his eviction from and accommodation, except; on one or more of the following ground :

(a) that the tenant has wilfully failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a notice of demand from the landlord;

(b) that the tenant has wilfully caused or permitted to be caused substantial damage to the accommodation;

(c) that the tenant has, without the permission of the landlord, made or permitted to be made any such construction as, in the opinion of the Court, has materially altered the accommodation or is likely substantially to diminish its value;

(e) that the tenant has on or after the first day of October, 1946, sub-let the

whole or any portion of the accommodation without the permission of the landlord;

(f) that the tenant has renounced his character as such or denied the title of the landlord & the latter has not waived his right or condoned the conduct of the tenant.

Explanation.--For the purposes of Sub-section (e) lodging a person in a hotel or a lodging-house shall not be deemed to be sub letting."

5. Doubts arose as to whether or not the permission of the District Magistrate was necessary even in those cases where ejectment was sought on one or more of the grounds specified in Section 3. In *Bhagat Singh v. Gangotri Devi* AIR 1849 Avadh 11 a learned single Judge of the Avadh Chief Court held that no suit could be filed in the Civil Court by the landlord for the eviction of a tenant unless he had, previous to the filing of the suit, obtained permission to do so from the District Magistrate. The legislature then intervened & by Section 10, U. P. Amending Act, 44 of 1948, the following provision was made :

"For the removal of doubts it is hereby declared that u/s 3 of the Principal Act no permission of the District Magistrate is or be deemed to ever have been necessary for filing of a suit for eviction against a tenant on any of the grounds mentioned in Clauses (a) to (f) of the said section."

The position is now clear. Section 3 read with Section 10 of the Amending Act now provides that if a landlord wants to evict a tenant on one or more of the grounds specified in Clauses (a) to (f), the permission of the District Magistrate is not required, but if the landlord wants to evict a tenant on any other ground, then such a permission is necessary before the institution of the suit in the civil Court.

6. Shri Jagdish Swarup, learned counsel for, the appellant, has argued that the District Magistrate is a statutory authority under the Act, & as such, he can exercise only the powers which have been conferred upon him by the Act. He contends that the Act confers no powers on the District Magistrate to grant permission. In this connection, he has invited our attention to Clause (d) of Section 2 of the Act which defines the expression "District Magistrate" as follows :

""District Magistrate" includes an officer authorised by the district magistrate to perform any of his functions under this Act."

He has referred also to Section 3A which provides for the fixation of rent, Section 7 which provides for the control of letting & Section 7-A which provides for the forcible eviction of a person from an accommodation in circumstances. He argues that in these three sections powers have been expressly conferred upon the District Magistrate & he can well exercise them, but from the language of Section 3 no such power is expressly conferred upon the District Magistrate, & as such, he is not competent to grant the permission. He goes on to say that by Section 17, the State Govt. has been given the power of making rules to give effect to

the purpose of this Act, but no rule has been framed so far prescribing that the District Magistrate shall have the power to grant the permission. Lastly he contends that the Act being a remedial measure, it should be construed in favour of the tenants.

7. Powers may be conferred upon an authority by a statute either expressly or by necessary implication. When u/s 3 the permission of the District Magistrate is contemplated, it follows necessarily that the District Magistrate has the power to grant the permission. In this connection, I may refer to the following from p. 367 of Maxwell on "The Interpretation of Statutes" Edn. 19 :

"A duty or right imposed or given to one may also cast by implication a corresponding burden on another, as in the case of the proviso in the Commission of the Peace requiring the Quarter Sessions not to give judgment in cases of difficulty unless in the presence of one of the Judges of Assize."

Reference may be made here to *The Queen v. Ghantrell* (1875) 10 QB 587 in which this principle was recognized. There the law provided :

"Provided always that if a case of difficulty upon the determination of any of the premises, before you or any two or more of you, shall happen to arise, then let judgment in no wise be given thereupon before you or any two or more of you, unless in the presence of one of our justices of either bench, or of one of our justices appointed to hold the assizes in the aforesaid county."

It was held that this provision not merely empowered, but required the Justices in any case of difficulty to obtain the opinion of a Judge; & by implication required the Judge to give his opinion. I am of opinion that by necessary implication, the District Magistrate has been empowered u/s 3 of the Act read with Section 10 of the Amending Act to grant permission for the eviction of tenants.

8. Sections 91 & 92, Civ. P. C. contain provisions for the consent of the Advocate-General for the institution of suits of certain types. They do not expressly confer any such powers upon the Advocate-General. Those sections, have, nevertheless, been always construed as conferring powers upon the Advocate-General to grant such permission. Learned counsel for the appellant contends that there the provision is contained in one & only one statute, namely, the Code of Civil Procedure, while here the Transfer of Property Act gives the unfettered right to the landlords to sue the tenants for ejectment, & that right has been restricted by another enactment, namely, the U. P. Control of Rent & Eviction Act. Law must be taken as a whole & no difference in position arises simply because it is contained in two or more statutes.

9. The next argument on behalf of the appellant was that the provision u/s 3 of the Act about the permission of the District Magistrate is a piece of delegated legislation, & as such, ultra vires. It is contended that by the Transfer of Property Act, the landlord has an unfettered right to evict his tenants. That right

has been cat down by Section 3 of the U. P. (Temporary) Control of Rent & Eviction Act & when the District Magistrate has been given the power to grant or refuse permission for filing suits for ejectment in the civil Courts without indication of any principles on which he is to act, he has been authorised to alter the law contained in the Transfer of Property Act on the subject of the ejectment of the tenant. I am unable to agree with this. Permission or sanction by authorities to bring suits or to to launch prosecution are no innovations. For example, in the suits under Sections 91 & 92 the sanction of the Advocate General is required for institution of suits relating to public nuisance or public charities. Under the Cri. P. C. & under many other enactments, permission or sanction of the State Govt. is required for filing complaints against public servants or in respect of certain offences. Nowhere in such provisions do we find the specification of the principles upon which the Advocate-General or the State Govt. or any other authority is to act in granting or refusing the permission or the sanction, as the case may be. I cannot see why there should have been the indication of such principles u/s 3, U. P. (Temporary) Control of Rent & Eviction Act, for the grant of permission by the District Magistrate. Delegated legislation per se is not void. There are certain fields of delegated legislation which are well-recognized, for instance, the power to make rules to carry out the purposes of an Act. In his book "American Administrative Law" Bernard Schwartz observes at p. 20 :

"The line has not been exactly drawn which separates those important, subjects which must be entirely regulated by the legislature itself, from those of less interest, in which a general provision may be made, & power given to those who are to act under such general provisions to fill up details."

10. Learned counsel relies upon the following: observation of Hughes C. J. in *Schedhter Poultry Corp v. United States* quoted at p. 21 of the book :

"Section 3 of the Recovery Act is without precedent. It supplies no standards for any trade, industry, or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them. For that legislative undertaking, Section 3 sets up no standards, aside from the statement of the general aims of rehabilitation, correction, & expansion described in Rule 2. In view of the scope of that broad declaration, & of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, & thus enacting laws for the Govt. of trade & industry throughout the country, is virtually unfettered. We think that the code making authority thus conferred is an unconstitutional delegation of legislative power."

11. There is a great difference between the power conferred upon the President in that case & the power here conferred upon District Magistrates. The vastness of the power given to the President can easily be seen. In this country power to grant such permission or sanction has been assigned to responsible authorities

by enactments since a long time. It will be difficult to carry out the purposes of an enactment without the conferment of such powers upon certain authorities. It is impossible for a legislature to provide all the details & for all the contingencies in an enactment. No decided case has been placed before the Court to the effect that the authorization of the District Magistrate to grant such permission would amount to delegated legislation &, as such, invalid. I am of opinion that by enacting Section 3, the legislature did not abdicate itself, & did not exceed the permissible limits when it allowed the District Magistrate to grant permission to the landlords to file suits for ejectments in civil Courts. This enactment, in my opinion, does not offend against the rule of delegated legislation.

12. No other point was urged on behalf of the appellant. I would, therefore, dismiss the appeal with costs.

Sankar Saran, J.

13. I agree.