

(1974) 12 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8344 of 1974

Lala Kishan Lal

APPELLANT

Vs

IV Addl. Distt. and Sessions Judge and Others

RESPONDENT

Date of Decision : 02-12-1974

Acts Referred:

Constitution of India, 1950 — Article 254

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 3

Citation : (1975) AWC 129

Hon'ble Judges : M.N. Shukla, J;K.C. Agrawal, J

Bench : Division Bench

Advocate : H.S. Joshi, for the Appellant;

Final Decision : Dismissed

Judgement

1. Heard the learned Counsel for the Petitioner.
2. The Prescribed Authority considered the comparative needs of the parties and arrived at the conclusion that this was a fit case for grant of permission. In arriving at this conclusion, he did not commit any error of law.
3. Counsel for the Petitioner next contended that the order passed by the Prescribed Authority in the instant case was without jurisdiction as u/s 3(e) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (hereinafter referred to as the New Act) only a magistrate of the first class could discharge the function of the prescribed authority, but on account of the passing of New Code of Criminal Procedure Sub-Divisional Magistrate ceased to possess the power of the magistrate of the first class therefore Sub-Divisional Officer, Gunnaur district Budaun who decided the present case had no authority to do so.
4. Counsel for the Petitioner also challenged the vires of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1974 (U.P. Act No. 19 of 1974) by which an amendment was made in the new Act in this regard.

The Act provides for a number of proceedings for different purposes under the various new Sections. The legislature has conferred the power to decide some of these proceedings on the Prescribed Authority. The Prescribed Authority has been defined in Section 3(e) of the said Act as follows:

3(e) Prescribed Authority:

Prescribed authority means a Magistrate of the first class having experience as such of not less than three years, authorised by the District Magistrate to exercise, perform and discharge all or any of the powers, functions and duties of the prescribed authority under this Act, and different Magistrates may be so authorised in respect of different areas or cases or classes of cases, and the District Magistrate may recall any case from any such Magistrate and may either dispose of it himself or, transfer it for disposal to any other such Magistrate.

5. The above definition would show that a Magistrate of the First Class having experience of not less than three years could alone be authorised by the District Magistrate to exercise, perform and discharge the powers and functions as well as duties under the new Act. But after the enforcement of the Code of Criminal Procedure (Act No. II of 1974) on 1-4-1974 the Sub Divisional Magistrates are no longer Magistrates of the First Class. As a result of the new code they have become Executive Magistrates, to meet this situation the U.P. Legislature passed the Amending Act No. XIX of 1974 and changed the definition of "Prescribed authority". The definition now given under the Act No. XIX of 1974 is as follows:

(e) "prescribed authority" means an officer having not less than three years experience as Munsif or as Magistrate of the first class or as Executive Magistrate authorised by general or special order of the State Government to exercise, perform and discharge all or any of the powers) functions and duties of the prescribed authority under this Act, and different officers may be so authorised in respect of different areas or classes of cases;

6. As a result of this amendment it would be seen that apart from a Munsif or Magistrate of the first class an Executive Magistrate could also be authorised by general or special order of the State Government to exercise and perform any of the powers and the functions of the prescribed authority under the new Act. This Amending Act was published in the U.P. Gazette Extraordinary dated 20th July, 1974. It was subsequently enforced by means of an order passed by the State Government. The said Amending Act also incorporated a transitory provision which is contained in Section 3 of the said Act. The relevant clause of the said section is as follows:

(c) every case instituted before or transferred to a Munsif or a Magistrate of the first class on or after April 1, 1974-

(i) and decided by him before the commencement of this Act, shall be deemed to have been validly transferred to and dealt by him as if he was duly appointed as prescribed authority;

7. This amendment validates all sections and judgments given by those officers who ceased to possess the powers of the Magistrates of the first class. It is beyond controversy that the Legislature has the power to give retrospective operation to an Act. It is also a settled principle that when an Amending Act is retrospective in operation, courts cannot refuse to Act upon it merely because particular thing was done sometime before the operation of the Amending Act. Applying the aforesaid principle it would be seen that even if it was correct that the Sub Divisional Officer, Gunnaur did not have jurisdiction to decide the application u/s 21 of the new Act made by the Respondent Nos. 3 and 4 on 30th of April, 1974 since now all the proceedings in the cases transferred to such magistrates of the first class have been validated, the decisions given in those proceedings by the Magistrate of the first class ipso facto stand validated. Therefore, the contention of the counsel for the Petitioner that the permission granted by the prescribed authority on 30-4-1974 is invalid, has no merit.

8. Counsel for the Petitioner thereafter submitted that since the New Act was enforced after receiving the assent of the President but the Amending Act No. 19 of 1974 has received the assent of the Governor and not the President, therefore, the present Amending Act is inoperative and is also ultra vires. The fact that the Amending Act is within the legislative competence of the State Legislature has not been disputed by the counsel for the Petitioner. The provision requiring assent of the President is contained in Article 254 of the Constitution. The Amending Act No. 19 of 1974 did not contain any provision repugnant to the provisions of the earlier law made by the Parliament. Requirements of obtaining assent from the President could not arise; if there was already an earlier law made by the Parliament or an existing law with respect to that matter. But as in the instant case the aforesaid conditions are not satisfied, it was not necessary to reserve the Amending Act for the consideration and the assent of the President. By the aforesaid Amending Act the U.P. Legislature has not changed, modified or amended the definition of the word, "Executive Magistrate" as defined in the new Code of Criminal Procedure. It has simply conferred the powers and functions of the prescribed authority on Executive Magistrate as well. As a result of this an Executive Magistrate is also entitled to act as a Prescribed Authority under the New Act, We, therefore, hold that since the two laws deal with different subjects there is no difficulty in their existing side by side. We, therefore, find that the submission of the counsel for the Petitioner that as the Amending Act No. 19 of 1974 did not receive the assent of the President, therefore, the said Act was unconstitutional, is untenable.

9. Consequently the writ petition is dismissed "in limini".