

(1975) 03 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 6766 of 1972

Ram Nath

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 18-03-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3, 7F

Citation : (1975) 03 AHC CK 0015

Hon'ble Judges : K.N.Singh, J

Final Decision : Dismissed

Judgement

K.N. Singh, J.

The petitioner is tenant of house No. 95 situate in Mohalla Dindarpura in the town of Moradabad. Smt. Ram Rati Devi is the landlord of that house. In 1970 she made an application before the Rent Control and Eviction Officer for grant of permission under Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, to file suit against the petitioner for his adjustment on the ground that she required the accommodation in question for her own use and occupation. The tenant contested her application. After necessary enquiry the Rent Control and Eviction Officer by his order dated September 10, 1971 granted permission to her. The petitioner challenged that order in revision before the Commissioner, but the Commissioner upheld the order of the Rent Control and Eviction Officer. Thereafter, the petitioner made representation to State Government under Section 7F of the Act. The State Government issued an interim order on February 5, 1972 staying the operation of the order of the Commissioner. But before the order of the State Government could be communicated to the landlord she filed suit on February 7, 1972 in the Civil Court for the petitioner's eviction. On receipt of the State Government's order of stay she made an application before the State Government that since the suit had already been filed prior to the communication of the interim order proceedings under Section 7F of the Act were rendered infructuous. The State Government accepted her contention and

rejected the petitioner's representation on the ground that it had been rendered infructuous. The petitioner thereafter made an application for review of the said order but that application was also rejected on October 21, 1972 on the ground that the State Government had no jurisdiction to review its order. Aggrieved the petitioner approached this court under Article 226 of the Constitution of India for quashing of the order of the State Government as well as the order of the Commissioner and the Rent Control and Eviction Officer granting permission to the landlord.

Learned counsel for the petitioner urged that the State Government committed a patent error of law in rejecting the petitioner's representation as the same had not been rendered infructuous. It is urged that the petitioner had sent a telegram to the landlord on February 7, 1972 which had been received by her prior to the actual institution of the suit in the Civil Court, therefore the landlord had no right to file the suit and the proceedings before the State Government were not rendered infructuous. On behalf of the landlord it is urged that the petitioner had no doubt sent a telegram which referred to the interim order passed by the State Government but the same was received by the landlord after 12 o'clock on February 7, 1972 but before the receipt of the telegram she had already filed the suit. It is further urged that the communication from the State Government relating to the issue of interim order was received by the landlord on February 11, 1972 therefore the order could not be effective prior to February 11, 1972.

In *Bhagwan Das v. Paras Nath* A.I.R. 1970 S.C, 971, it was held that if a suit is validly instituted after obtaining permission as required under Section 3(1), it does not cease to be maintainable even 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, once the suit is validly instituted State Government's power to revoke the permission granted under Section 3(1) is exhausted. In *Mohd. Ismail v. Nanhey Lal* A.I.R. 1970 S.C. 1919, (2) the Supreme Court observed:

"The words of Section 7F indicate that the State Government can only exercise its jurisdiction to revise the order of the Commissioner before the actual institution of the suit. The language of Section 7F shows that on the facts of the case before it the State Government must consider whether the grant of or refusal to grant permission for the filing of a suit should be upheld or not. The Section does not seem to be aimed at invalidating a suit already instituted and can only operate at a stage before the landlord launches his proceeding. There is nothing in subsection (4) of Section 3 read with Section 7F to show that a landlord should wait till the powers of the revising authorities have been exhausted."

After making the aforesaid observation the Supreme Court held that the State Government's jurisdiction under Section 7F could be exercised only prior to the institution of the suit but once suit is filed after the Commissioner's order it has no jurisdiction to set aside the order of the Commissioner granting permission to

the landlord. The jurisdiction of the State Government therefore must be exercised prior to the institution of the suit and if any order is passed after the institution of the suit such an order would be disregarded by the Civil Court before which the suit may be pending and the suit would be maintainable.

It is thus well settled that though the State Government has jurisdiction under Section 7F of the Act to set aside the order of the Commissioner granting permission to a landlord but that jurisdiction cannot be exercised in a case where the suit has already been instituted by the landlord. The jurisdiction of the State Government to interfere with the order granting permission is thus limited to a point of time, i.e., prior to the institution of the suit. Once the suit is instituted after the order of the Commissioner, the State Government has no jurisdiction to transfer with the order of the Commissioner to hold that the suit was filed without a valid permission.

Learned counsel for the petitioner placed reliance on *Smt. Prabhawati v. Dr. Pritam Kaur* A.I.R. 1972 S.C. 1910, in support of his contention that by mere institution of Suit by the landlord, the jurisdiction of the State Government is not taken away. In the case of *Smt. Prabhawati* the facts were quite different, there the landlord had been granted permission by the Commissioner but on representation the State Government had allowed the revision and set aside the permission granted by the Commissioner. The landlord challenged the legality of the order before the High Court under Article 226 of the Constitution. The High Court set aside the order of the Government on the ground that the State Government had set aside the Commissioner's order on irrelevant considerations. The High Court thereupon directed the State Government to rehear the revision of the tenant. But before the hearing could take place before the State Government the landlord immediately after the judgment of the High Court filed a suit for eviction of the tenant. It was in this background that the Supreme Court observed that once the High Court had remanded the proceedings to the State Government the landlord could not adopt any trick in defeating the order of remand passed by the High Court. It was on these considerations that the Supreme Court held that the State Government had jurisdiction to hear and decide the matter as directed by the High Court. The case of *Smt. Prabhawati* does not lend any assistance to the petitioner's contention.

In *Baleshwar Dayal v. State of U. P.* A.I.R. 1972 All. 12, a Full Bench of this Court considered the question as to whether the State Government has no power to pass a stay order and 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. The Full Bench held that the State Government has power to make such interim order which it may consider necessary. The Full Bench further held that an interim order staying operation of permission granted by the District Magistrate under Section 3 of the Act is in substance an order restraining landlord from instituting suit therefore, it becomes effective only from

the time when it is communicated to the party concerned. In view the law laid down by the Full Bench it is clear that in the instant case the interim order even though passed on February 1972 could not be effective or operative against the landlord till it was communicated to her. If the interim order had been communicated to the landlord she had no right to file the suit but in case she filed the suit prior to the communication of the interim order passed by the State Government, the suit was validly instituted. It is further clear that once the suit is filed by the landlord after obtaining valid permission, the jurisdiction of the State Government is exhausted and it has no jurisdiction to hear or decide the tenant's representation under Section 7F of the Act. In this view of the matter I have no doubt in my mind that the State Government did not commit any mistake or error apparent on the face of record in holding that the proceedings before it had become infructuous.

Learned counsel for the petitioner urged that he was not given any opportunity to meet the landlord's contention that the proceedings before the State Government had been rendered infructuous and as such the order was passed in violation of the principles of natural justice. I find no merit in the contention. The principles of natural justice are not static. The principles vary and differ in its application on the facts of each case. In the instant case the suit had been filed on February 7, 1972 and the interim order was communicated to the landlord on February 11, 1972 as such the State Government had no jurisdiction to hear or decide the petitioner's representation on merits. Even if an opportunity could be given to the petitioner he could not succeed in getting a valid order passed in his favour. In the circumstances giving of opportunity to the petitioner would be an empty formality.

I do not want to express any opinion on the question as to whether interim order had been communicated to the landlord prior to the institution of the suit. As already noted there is controversy on this question. According to the petitioner he had sent a telegram giving necessary information to the landlord. On the other hand landlord's contention is that the telegram was received after the suit had already been instituted and that communication from the State Government relating to the issue of interim order was received by her on February 11, 1972, i.e., four days after the institution of the suit. Since this question is highly disputed, it would not be proper to decide it in the present proceedings. It is always open to the parties to raise the question of maintainability of suit before the Civil Court and in that situation it will be open to the Civil Court to decide the question.

In the result I find no error apparent on the face of the record in the impugned order of the State Government. The petition is accordingly dismissed, but there will be no order as to costs. The interim order dated October 31, 1972 is vacated.