
(1950) 10 AHC CK 0038
In the Allahabad High Court
Case No : First Appeal No. 118 of 1950

Seth 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 3

Citation : (1951) 21 AWR 124

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

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

Bind Basni Prasad, J.—This is a plaintiff's appeal from the judgment of the learned Civil Judge of Agra, dated the 31st of January, 1950. The relevant facts are as follows.

2. The plaintiff is the defendants' tenant in a house, situate in the city of Agra. In 1945 and 1947 the defendants unsuccessfully applied to the District Magistrate for permission to evict the plaintiff from the house. He made a third application in 1948 and on the 22nd of July, 1948, the District Magistrate passed the following order: -

This is an application for permission to eject through the Civil Court Ganshiamdass a tenant of the applicant's house. An application by the same parties was made in 1945 and rejected. A second application was made again in 1947 and was rejected on 18.11.1947. The applicant himself is occupying another man's house for his business and an application has now been made for permission to eject him. Under the circumstances permission is accorded to eject him, Ghansham Dass through the Civil Court.

3. After the grant of this permission, the tenant (the plaintiff in the present case)

brought a suit (No. 122 of 1948), from which this appeal arises, on the 31st of August, 1948, in the court of the Civil Judge at Agra, for a declaration that the aforesaid order of the District Magistrate was null and void and 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 and both the suits were heard together by him. He dismissed the tenants' suit, but decreed the landlords' suit. 1 he 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 194i. The appellant made an application for the transfer of that appeal to this Court, but it was rejected.

4. No evidence was adduced in the court below. The question is mainly one of inter petition.

5. During the War there was difficulty about accommodation and 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 and then Ordinances were made making provisions to the same effect. Ultimately, the Ordinances were replaced by the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (Act III of 1947).

6. The second paragraph 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 and the rent of such accommodation and to prevent the eviction of tenants therefrom .

7. 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 ;-

3. No suit shall, without the permission of the District Magistrate, be filed in any Civil Court against a tenant for his eviction from any accommodation, except on one or more of the following grounds:-

(a) that the tenant has willfully 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 willfully 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 and the latter has not waived his right or condoned the conduct of the tenant.

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

8. 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 Bhugga v. Gngotti Devi* AIR 1949 Oudh 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 and by Section 10 of the U. P.

9. 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.

10. 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.

11. Shri Jagdish Swarnp, learned counsel for the appellant, has argued that the District Magistrate is a statutory authority under the Act, and, 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 Magistrates" as follows:

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

12. He has referred also to Section 3 A which provides for the fixation of rent. Section 7 which provides for the control of letting and Section 7-A which provides

for the forcible eviction of a person from an accommodation in circumstances. He argues that in these three Section powers have been expressly conferred upon the District Magistrate and he can well exercise them, but from the language of Section 3 no such power is expressly conferred upon the District Magistrate, and, as such, he is not competent to grant the permission. He goes on to say that by Section 17, the State Government 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.

13. 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 page 367 of Maxwell on "The Interpretation of Statutes" (10th Edition):

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

14. Reference may be made here to The Queen v. Chanreli (L.R.) 10 Q.B. 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.

15. 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 ; and 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.

16. Sections 91 and 92 of the CPC 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 and 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, and that right has been restricted by another enactment, namely the U.P. Control of Rent and Eviction Act. Law must be taken as a whole and no difference in position

arises simply because it is contained in two or more statutes.

17. 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, and, as such, Ultra virus. virus. It is contended that by the Transfer of Property Act, the landlord-has an unfettered right to evict his tenants. That right has been out down by Section 3 of the U. P (Temporary) Control of Bent and Eviction Act and when the District Magistrate has been given the power to grant or refuse permission for filing suit 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 launch prosecution are no innovations. For example, in the suits under Sections 91 and 92, the sanction of the Advocate General is required for institution of suits relating to public nuisance or public charities-Under the Criminal Procedure Code and under the Criminal Procedure Code and under many other enactments, permission or sanction of the State Government 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 Government 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 of the U.P. (Temporary) control of Bent and Eviction Act for the, grant of permission by the District Magistrate. Delegated legislation parse is not void. There are certain fields of delegated legislation which are well-recognized, for in stance, the power to make rules to carry out the purposes of an Act. In his book American Administrative Law, Bernard Schwartz observes at page 20

The line has not been exactly drawn Which separated 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, and power given to those who are to act under such general provisions to fill up details.

18. Learned counsel relies upon the following observation of Mr. Chief Justice Hughes in Schechter Poultry Corp. v. United States quoted at page 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, and expansion described in Section 2. In view of the scope of that broad declaration, and of the nature of "the few restrictions that are imposed, the discretion of the President in approving or prescribing codes,

and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the code making authority thus conferred is an unconstitutional delegation of legislative power.

19. There is a great difference between the power conferred upon the President in that case and 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 and 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 and, as such, invalid. I am of opinion that by enacting Section 3, the legislature did not abdicate itself, and did not exceed the permissible limits when it allowed the District Magistrate to grant permission to the landlords to file suits for ejectment in civil courts. This enactment, in my opinion, does not offend against the rule of delegated legislation-No other point was urged on behalf of the appellant. I would, therefore, dismiss the appeal with costs-

Sankar Saran, J.

20. I agree.

By the Court

21. The appeal is dismissed with costs.