
(1971) 10 AHC CK 0011
In the Allahabad High Court
Case No : Second Appeal No. 2084 of 1968

Smt. Lakshmi Devi

APPELLANT

Vs

Onkarilal

RESPONDENT

Date of Decision : 15-10-1971

Acts Referred:

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

Citation : AIR 1972 All 175 : (1971) 41 AWR 826

Hon'ble Judges : T.S. Misra, J; Satish Chandra, J

Bench : Division Bench

Advocate : N. Kumar, for the Appellant;

Final Decision : Allowed

Judgement

Satish Chandra, J.—A learned Single Judge of this Court has referred this case to a larger Bench because he felt that there was a conflict of opinion between two single Judge decisions on the question whether the Commissioner while seized of a revision u/s 3 (3), Rent Control Act, had power to pass an interim order of stay. In *Dr. B. N. Bhallav v. B. P. Gupta* 1957 A LJ 704 it was held that the Commissioner had power to pass orders of stay, while in *Ram Deo v. Devi Prasad Kakkar*, S. A. No. 4569 of 1963, D/- 7-10-1964 (All) a contrary view was taken. Another question upon which the learned single Judge felt doubtful was whether the order of a stay granted by the Commissioner took effect from the moment it was passed or became effective on service upon the parties. He, therefore, referred the aforesaid questions to a larger Bench.

2. After this reference a Full Bench of this Court in *Baleshwar Dayal v. State of U. P.*, Spl. Appeal No. 41 of 1969 (reported in AIR 1972 All 12) has unanimously held that the State Government has got power to pass a stay order while acting u/s 7-F of the Rent Control Act. It was also decided that a stay order passed by the State Government becomes effective from the time it is communicated to the party concerned. u/s 3 (3) of the Act the Commissioner is to satisfy himself as to the correctness, legality or propriety of the order passed by the District

Magistrate or as to the regularity of proceedings held before him, and he may alter or reverse that order or make such other order as may be just and proper. u/s 7-F the State Government can call for the record of any case and can make such order as appears to it necessary for the ends of justice. The ambit of the power conferred upon the Commissioner as well as the State Government appears to be similar in its nature and character. Both authorities can pass orders in the interest of justice or in other words as may be just and proper. The power u/s 7-F has been construed to include the power to grant an interim stay order. In our opinion, this power to make interim stay orders equally flows from the power conferred on the Commissioner by Section 3 (3). We would, therefore, hold that the Commissioner while seized of a revision u/s 3 (3) has power to issue stay orders.

3. The view of the Full Bench that such stay orders become effective only from the time of communication to the concerned party is equally applicable to the stay order passed by the Commissioner. In the result, we would answer the referred questions as follows:

- (1) The Commissioner has power to pass stay orders while seized of a revision u/s 3 (3), Rent Control Act; and
- (2) The stay orders passed by the Commissioner became effective from the moment of their communication to the concerned party.

Let the papers of the case be returned to the learned Single Judge with these answers.