
(1956) 01 AHC CK 0046
In the Allahabad High Court
Case No : Civ. Misc. Writ No. 805 of 1955

Sri Radhakant Bhargava

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 13-01-1956

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1956) 26 AWR 831

Hon'ble Judges : M.L. Chaturvedi, J

Bench : Single Bench

Advocate : S.N. Kacker, for the Appellant; S.C. Khare, Harnandan Prasad and Man Singh, for the Respondent

Final Decision : Allowed

Judgement

M.L. Chaturvedi, J.—This is a petition Under Article 226 of the Constitution. The Respondent No. 6 is the owner of houses Nos. 78 and 78A, K.P. Kakkar Road, Allahabad and the Petitioner is a tenant in a shop included in house No. 78A. The Petitioner has been a tenant from a long time and in 1945, an application was filed by the Respondent No. 6 for permission to file a suit to eject the Petitioner. This application was granted on 31-1-1945 but, in spite of the order granting the application, no suit was filed by the Respondent for the Petitioner's ejectment. The Petitioner's case is that because of the order granting permission to sue, the Respondent was able to enhance the rent and therefore dropped the idea of bringing a suit. This assertion is vehemently denied on behalf of the Respondent. In 1952, the said Respondent again made an application before the Rent Control Officer for permission to bring a suit for ejectment against the Petitioner. The Rent Control Officer went into the matter and rejected the application by his order dated 22-11-1952. The Respondent No. 6 repeated the application in 1953 and this was also dismissed by the Rent Control Officer on 9-3-1953. The Respondent went up in revision against the order and the revision was dismissed by the Commissioner on 30-9-1953. Undaunted by these dismissals, the

Petitioner made another application in 1954 for the same relief and this time the Rent Control Officer allowed the application for granting the Respondent permission to bring a suit for ejectment against the Petitioner. The Petitioner went up in revision to the Commissioner and the Commissioner was of the opinion that a further enquiry was necessary with regard to some of the facts and he set aside the order of the Rent Control Officer and remanded the case to him for a fresh enquiry and orders. This order of remand was passed on 13-6-1955 and the case came back to the court of the Rent Control and Eviction Officer. The Petitioner made an application to the District Magistrate praying for the transfer of the case and for its decision by the District Magistrate himself. The District Magistrate called for the record of the case and some dates were fixed for hearing before him. On 11-8-1955, the Respondent No. 6 requested the District Magistrate to send the case back to the Rent Control Officer but the District Magistrate did not accede to the request and passed orders authorising the City Magistrate, Allahabad to make enquiries and to dispose of the matter. The City Magistrate heard the case partly on 18-8-1955 and the case was then adjourned first to 19th and then to 27-8-1955. On this date, the Respondent No. 6 filed an application before the City Magistrate saying that the Government had directed a stay of further proceedings in the case and on 3-9-1955 a telegram was also received from the Government addressed to the District Magistrate staying further proceedings. The present petition was then filed on 7-9-1955 praying for quashing the order of the stay passed by the State Government and for issuing a writ of mandamus to the Government directing it to refrain from interfering with the proceedings of the case going on before the City Magistrate. Notices were ordered to be issued on the petition but before it came on hearing an order was passed by the State Government in November, 1955, setting aside the order of the Commr. and allowing the application of Respondent No. 6 for bringing a suit against the Petitioner to eject him from the house. After this order, an application for the addition of certain grounds and prayers in the writ petition was made. The application has been necessitated by the order of the Government passed during the pendency of the writ petition and the amendments prayed for in the application are reasonable and also necessary for the final disposal of the matter. For the above reasons, I have allowed the application and the grounds and prayers as prayed in this application shall be added to the writ petition. The main prayer that is now to be considered is for the issue of a writ of certiorari to quash the order of the State Government passed in November, 1955 granting permission to Respondent No. 6 to bring a suit against the Petitioner. It is also prayed that a writ of mandamus be issued to the City Magistrate to decide the case pending before him according to law.

2. The above facts are non-disputed though there is considerable dispute over other facts the decision of which is really not necessary for the decision of his petition. The point that arises for decision is a short one and that is, whether, in the circumstances of the case, the State Government had the jurisdiction to allow the revision u/s 7F of the Rent Control and Eviction Act and to grant

permission to the Respondent No. 6 to file a suit against the Petitioner. The argument of the learned Counsel for the Petitioner is that a revision is maintainable before the Government only after permission to bring a suit has been granted or refused and in the instant case the position is that the permission has neither been granted nor refused as a result of the order passed by the Commissioner. As already stated the Commissioner has set aside the order of the Rent Control Officer granting permission to bring a suit and has remanded the case to him for a fresh decision. It is argued that on these facts it cannot be said that this is a "case granting or refusing to grant permission." I think there is force in this contention. The important words of Section 7F are:

The State Government may call for the record of any case granting or refusing to grant permission.

3. The power of the State Government conferred by Section 7F is a power to pass suitable orders if there is a case "granting or refusing to grant permission" u/s 3. The Rent Control Officer had granted the permission but that order no longer stands and I do not think it can be said that the commissioner had refused to grant the permission as his order was to remand the case to the Rent Control Officer for a fresh trial. The Commissioner has nowhere said that permission to bring a suit should be refused. On the other hand, he has considered certain facts of the case and observed that some of them require fresh consideration. He has remarked about the end of his judgment that it was not clear why some of the shops were lying vacant and were not utilized by the owner for one or the other of the purpose for which he wanted to eject the tenant. It is further not clear, according to him how the shop vacated after the order of the Rent Control Officer was not released in his favour. He further remarked that there were allegations that some other accommodation was available to the owner in certain portion of the same premises. He says:

There was no satisfactory note on the record to show what accommodation was in occupation of the owner and whether any of the needs given in the application could be satisfied out of the accommodation already available.

4. After a consideration of all these facts and circumstances he thought that a fresh enquiry should be conducted on the points indicated by him. This order of the commissioner, in my opinion, cannot be said to be an order refusing permission to sue. There may be a case where the Commissioner set aside the order granting permission to sue and a reading of the order may show that he intended no further enquiry to be made and the prayer to bring a suit to be refused. In such a case it may be possible to hold that the Commissioner had refused to grant sanction though it was not said so in so many words. But that is not the position here and the Commissioner clearly wants a fresh enquiry to be held. It was then argued that the Commissioner has temporarily refused permission to sue on the material as it was on the record and his decision should be taken to be a decision refusing permission to bring a suit on that material. I do not think that the word ""refusing" used in Section 7F would include a case

where there is no final refusal but only an order suggesting that a fresh enquiry be made. In such a case I do not think that it can be said that the order is one refusing the permission. The words "granting" and "refusing" have to be read in the sense in which they have been used in Sub-section (2) of Section 3. This Sub-section authorises a District Magistrate to grant or refuse to grant permission to sue the tenant and the party aggrieved is then granted a right to file a revision before the Commissioner. The Commissioner has been given a right under Sub-section (3) to alter or reverse the order or make such other order as may be just and proper. Under Sub-section (4) the order of the Commissioner passed under Sub-section (3) is to be final subject to any order passed by the State Government. The provisions of Sub-section (4) do not mean that every order passed under Sub-section (3) is subject to an order passed by the State Government and they must refer to those cases which are revisable by the State Government u/s 7F. The power of revision to the Government is conferred by Section 7F and not by Sub-section (4) of Section 3. But Sub-section (4) does show that what the legislature contemplated was that it is the order of the Commissioner which would be revisable by the State Government.

5. The likelihood is that the power of revision is meant to be exercised when all the subordinate officers of tribunals have fully and finally dealt with the matter. The State Government is the ultimate authority and the legislature probably intended that this authority should deal with the matter only after it has been finally decided by the Rent Control Officer and the Commr. It may be possible that in a case in which no revision has been filed before the Commissioner, the State Government may have a right to revise the order of the Rent Control Officer, because after the period of limitation provided for filing a revision to the Commissioner, the order of the Rent Control Officer becomes final and it would be an order granting or refusing to grant permission. The order of the Commissioner, as already stated, has set aside the order of the Rent Control Officer and remanded the case for retrial. This is therefore not a case which can be said to be one of "granting or refusing to grant permission." In this view of the matter, I am inclined to hold that at this stage no revision lay to the State Government and that its order allowing the revision is without jurisdiction.

6. The other point argued by the learned Counsel for the Petitioner is that the provisions of Section 7F are invalid as they confer on the Government an unguided and uncontrolled and arbitrary power to allow a revision in one case and dismiss in another similar case. I do not think there is any substance in this contention. There may be numerous circumstances and facts on which the propriety of the order may depend and it was not possible for the legislature to lay down all of them.

7. For the reasons given above this petition is allowed and the order of the State Government held to be void with the result that the proceedings before the Collector or an officer, to whom he delegates his power u/s 3, will continue and be disposed of according to the directions given by the Commissioner. Issue a

writ of mandamus to the Respondent No. 1 not to enforce his order passed in November, 1955. Another writ of mandamus shall issue to the Respondent No. 3 directing him either to hear and dispose of the case himself as directed by the Addl. Commissioner or to have it tried and disposed of by any other competent authority to whom he thinks fit to delegate his powers. The Petitioner will be entitled to his costs from the Respondent No.