

Purshottam Das vs Smt. Raj Mani Devi on 30 October, 1968

Equivalent citations: 1970 AIR 763, 1969 SCR (2) 588, AIR 1970 SUPREME COURT 763, 1968 ALL. L. J. 1023, 1969 SCD 68, 1970 (1) SCJ 544, 1969 2 SCR 576, 1970 RENCJ 367

Author: R.S. Bachawat

Bench: R.S. Bachawat, S.M. Sikri

PETITIONER:
PURSHOTTAM DAS

Vs.

RESPONDENT:
SMT. RAJ MANI DEVI

DATE OF JUDGMENT:
30/10/1968

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
SIKRI, S.M.

CITATION:
1970 AIR 763 1969 SCR (2) 588

ACT:
U.P. (Temp.) Control of Rent and Eviction Act 1947,
ss. 3 and 7F--Rent Control Officer permitted institution of
suit for ejectment--Suit filed--Commissioner revokes
permission--State Government allows filing of
suit--Defence for ejectment passed--Effect.

HEADNOTE:
The respondent-landlord obtained permission to institute
a suit from the Rent Control & Eviction Officer under s.
3(1) of the U.P. (Temp.) Control of Rent and Eviction Act,
1947, for ejecting from his house the Appellant-tenant. The
respondent filed a suit for eviction against the
appellant. Later the Commissioner acting under s. 3(3)
revoked the permission But the State Government on March
30, 1963 acting under s. 7F set aside the Commissioner's
order and gave leave to the respondent to file the suit

after 4 months of the date of the order i.e., July 30, 1963. On July 11, 1963 the trial court decreed the suit. The appellant filed an appeal. The appellate court set aside the trial court's decree and remanded the suit for fresh trial. On remand, the trial court decreed the suit on March 2, 1964 holding that the permission granted by the State Government became effective from July 30, 1963 and as the suit was still pending a decree could be passed in the suit. This decision was affirmed by the first appellate court, and also by the High Court. Dismissing the appeal this Court.

HELD: If the State Government acting under s. 7F sets aside the order of the Commissioner revoking the permission, the order under s. 3(1) granting permission is revived. The result is that there is an effective permission to institute the suit under s. 3(1) and the suit is validly instituted. [578 D]

The direction of the 'State Government to file the suit after four months of the order meant that the permission under s. 3(1) would become effective on the expiry of 4 months i.e. from July 30, 1963. The landlord had thus an effective permission to institute the suit under s. 3(1) from July 30, 1963. The decree in the suit was passed on March 2, 1964. On that date the landlord had a valid permission to institute the suit. The suit was therefore maintainable. [578 H]

Bhagwan Das v. Paras Nath, [1969] 2 S.C.R. 297, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1449 of 1966.

Appeal by special leave from the judgment and decree dated April 28, 1966 of the Allahabad High Court in Second Appeal No. 289 of 1965.

M.K. Ramatnurthi, Shyamala Pappu and Vineet Kumar, for the appellant.

B.C. Misra, O. Prakash, R.K. Mathur and M.V. Goswami, for the respondent.

The Judgment of the Court was delivered by Bachawat, J. The appellant is the tenant and the respondent is the landlord of House No. 5B, Old 122 Maya Mirganj, Allahabad. The appeal arises out of a suit for ejectment by the landlord against the tenant from the house. On October 11, 1961, the landlord obtained permission to institute the suit from the Rent Control and Eviction Officer under s. 3 (1) of the U.P. (Temp.) Control of Rent and Eviction Act, 1947. On October 14, 1961 the landlord instituted the present suit for eviction against the tenant. On March 27, 1962 the Commissioner Allahabad Division acting under s. 3 (3) revoked the permission to institute the suit. On March 30, 1963 the State Government acting under s. 7F set aside the Commissioner's order and gave leave to

the landlord to file the suit with effect from July 30, 1963. On July 11, 1963 the Trial Court decreed the suit. The tenant filed an appeal against the decree. On November 4, 1963 the appellate court set aside the decree and remanded the suit for fresh trial. After the suit went back on remand the Trial Court decreed the suit on March 2, 1964. The Trial Court held that the permission granted by the State Government became effective from July 30, 1963 and as the suit was still pending a decree could be passed in the suit. An appeal against the decree was dismissed on November 28, 1964. A second appeal was dismissed by the High Court on April 28, 1966. The present appeal has been filed by the tenant after obtaining special leave. The sole question in the appeal is whether in the circumstances there was a valid permission to institute the suit under s. 3 (1).

In *Bhagwan Das v. Paras Nath*(1) this Court held that a suit validly instituted after obtaining permission of the Commissioner under s. 3(3) did not become incompetent if the State Government acting under s. 7F revoked the permission after the institution of the suit. In that case the District Magistrate refused to give permission under s. 3 (1) to institute the suit. The Commissioner acting under s. 3 (3) set aside the order and granted permission to institute the suit. The suit was decreed by the Trial Court on November 2, 1960. The tenant filed an appeal against the decree. During the pendency of the appeal the State Government acting under s. 7F revoked the permission granted by the Commissioner. The Court held that though the order under s. 3(3) was subject to an order under s. 7F the Government's power under s. 7F to revoke the permission granted by the Commissioner became exhausted once the suit was validly instituted.

In support of his contention that the present suit is not maintainable, the appellant relies on the following observations of Hegde, J. :-

[1969] 2 S.C.R. 297.

"When the Commissioner sets aside the order passed by the District Magistrate granting permission to file a suit for ejecting a tenant, the order of the Commissioner prevails. If he cancels the permission granted by the District Magistrate there is no effective permission left and the suit instituted by the plaintiff without a- waiting his decision must be treated as one filed without any valid permission by the District Magistrate."

Having regard to these observations the present suit though validly instituted after obtaining the permission under s. 3 (1) became incompetent when the permission was revoked by the Commissioner under s. 3 (3). But the order under s. 3 (3) itself was set aside by the State Government under s. 7F during the pendency of the suit. The question is what is the effect of this order under s. 7F. Now, s. 3(4) provides that the order of the Commissioner under s. 3(3) subject to an order passed by the State Government under s. 7F. If the State Government acting under s. 7F sets aside the order of the Commissioner revoking the permission, the order under s. 3 (1) granting permission is revived. The result is that there is an effective permission to institute the suit under s. 3 (1) and the suit is validly instituted.

In Bhagwan Das's Case (1) the suit was validly instituted after obtaining permission from the Commissioner under s. 3 (3). The State Government could not render such a suit incompetent by any order under s. 7F. In the present case the suit was validly instituted after obtaining permission from the Rent Control and Eviction Officer under s. 3 (1). The effect of the order of the Commissioner revoking the permission was that the suit became incompetent. The State Government acting under s. 7F had power to revise and set aside the Commissioner's order and restore the permission granted under s. 3 (1) so as to make the suit competent.

The order of the State Government after stating that in the interest of justice the house should be available to the landlord for his use, set aside the Commissioner's order under s. 3(3). The result was that the order of the Rent Control and Eviction Officer passed under s. 3 (1) stood restored. The further direction in the order that the landlord "is advised to file a suit for eviction from the house in dispute against the opposite party in a civil court under s. 3 of the Act, which will be applicable four months after the date of the order" really means that the permission under s. 3(1) would become effective on the expiry of 4 months. The landlord had thus an effective permission to institute the suit under s. 3(1) on the expiry of four months from March 30, 1963, that is to say, as from July 30, 1963. The (1) [1969] 2 S.C.R. 297.

decree in the suit was passed on March 2, 1964. On that date the landlord had a valid permission to institute the suit. The suit was therefore maintainable.

In the result, the appeal is dismissed. There will no order as to costs.

Y.P.

Appeal dismissed.