R.N. Seth vs Girja Shanker Srivastava on 2 March, 1950

Equivalent citations: AIR1952ALL819, AIR 1952 ALLAHABAD 819

JUDGMENT

Harish Chandra, J.

1. This is a second appeal from the judgment and decree of the learned District Judge of Lucknow reversing in part the judgment and decree of the Munsif, North Lucknow, dismissing the respondent's suit against the appellant for arrears of rent and ejectment from a certain house. The lower appellate Court decreed the respondent's suit for ejectment but dismissed it with respect to the claim for arrears of rent. The appellant has come up in second appeal to this Court.

2. The only questions that arise in this appeal are of law. Admittedly the appellant is the tenant of the respondent in the house in dispute. The respondent gave him the requisite fifteen days' notice as required under Section 106, T. P. Act, 1882 and produced evidence of his having been given the necessary permission by the Rent Control and Eviction Officer of Lucknow under Section 3, U. P. Control and Eviction Act, 1947, for the institution of the suit. The fact that such permission was given by the Rent Control and Eviction Officer of Lucknow on 28-4-1947, before the institution of the suit is not denied. The appellant's contention is that the permission given by the Rent Control and Eviction Officer was subsequently revoked by the District Magistrate, Lucknow, by an order dated 24-7-1947, and that the suit is, therefore, not maintainable, having regard to the provisions of Section 3 of Act III [3] of 1947. It will be noted that under that section no suit for ejectment except on one or more of the ground mentioned in Clauses (a) to (f) of that section can be instituted without the permission of the District Magistrate. The appellant's further contention, however, is that no suit against a tenant for his eviction from any accommodation can be instituted except on one or more of the grounds mentioned in Clauses (a) to (f) of that section and that too with the previous permission of the District Magistrate. According to the findings of the Court below none of the grounds mentioned in Clauses (a) to (f) of this section exists in the present case and if this further contention of learned counsel for the appellant is accepted the suit is not maintainable. Reliance is placed on the case of Bhagat Singh Bugga & Co. v. Mrs. Gangotri Devi, A.I.R. 1949 Oudh 11 decided by a single Judge of the Oudh Chief Court. In another unreported case of the Oudh Chief Court, Gokaran Nath Yajnik v. Sheo Ram Upadhyaya, S. A. No. 636 of 1947, D/- 11-9-1947, however, a different view was taken and it was held that it was only in cases which were not covered by Clauses (a) to (f) of the section that the permission of the District Magistrate was necessary before the institution of a suit for the eviction of a tenant. The Allahabad High Court has in a later case taken the same view. It will be noted that subsequently the U. P. Legislature passed an Act, the U. P. (Temporary) Control of Rent and Eviction (Amendment) Act, 1948, Section 10 of which makes it clear that under Section 3 of the 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."

It is contended that this section is ultra vires the U. P. Legislature and reliance is placed upon the case of Amar Nath v. Firm Chotelal Durgaprasad, A. I. R. 1938 ALL. 593 (F.B.), in which it was said that the functions of a Legislature are not to declare the law but to enact provisions of the law." The power of the legislature to pass an Act of a declaratory nature with a retrospective operation is universally accepted : vide Maxwell on the Interpretation of Statutes, Edn. 8, p. 196. Section 10 of the amending Act cannot, therefore, be regarded as ultra vires the U. P. Legislature and, in my view, in Amarnath's case there was no intention to lay down anything to the contrary. But as I have just pointed out the language used in Section 3 itself makes the intention quite clear. With all respect I am unable to agree with the view expressed in Bhagat Singh Bugga's case. The suit cannot, therefore, be said to have been improperly instituted on the ground mentioned above.

3. What remains now to be considered is the effect of the cancellation by the District Magistrate of the order passed by the Rent Control and Eviction Officer on 28-4-1947. The learned District Judge was inclined to hold that there was nothing in the Act empowering the District Magistrate to delegate his functions under Section 3 of the Act to another officer, although in view of the fact that the point was not raised before him, he proceeded on the assumption that such power had in fact been conferred by the Act upon the District Magistrate. No doubt, there is no specific provision in the Act to that effect. But the term 'District Magistrate' is defined in Section 2 (d) as follows:

> "'District Magistrate' includes an officer authorised by the District Magistrate to perform any of his functions under this Act."

No doubt, this is a somewhat unusual method of conferring a power upon the District Magistrate to delegate his authority with respect to any of his functions under the Act to another officer. But so long as the intention of the Legislature is clear, the form in which such intention is expressed is of no consequence and in view of the language used in Section 2 (d) of the Act there can be no doubt that the District Magistrate has been empowered to authorise any officer to perform any of his functions under the Act. It is not denied that the Rent Control and Eviction Officer, Lucknow, was empowered by the District Magistrate, Lucknow, to perform his functions under Section 3 of the Act. The learned District Judge has taken the view that after delegating his functions under Section 3 of the Act to the Rent Control and Eviction Officer, the District Magistrate had no power left to perform any of his functions under that section. He has relied upon the case of Emperor v. Sibnath Banerji, A. I. R. 1945 P. C. 156. In that case their Lordships of the Judicial Committee were called upon to interpret Sub-section (5) of Section 2, Defence of India Act 1939 with reference to Sub-section (1) of Section 49, Government of India Act, 1935. They observe:

> "Their Lordships would also add, on this contention, that Sub-section (5) of Section 2 provides a means of delegation in the strict sense of the word, namely, a transfer of the power or duty to the officer or authority defined in the sub-section, with a corresponding divestiture of the Governor of any responsibility in the matter, whereas under Section 49(1) of the Act of 1935 the Governor remains responsible for the action of his subordinates taken in his name,"

They were apparently guided by the special language used in Sub-section (5) of Section 2, Defence of India Act, which is reproduced below:

> "A provincial Government may by order direct that any power or duty which by rule under Sub-section (1) is conferred or imposed on the Provincial Government or which being by such rule conferred or imposed on the Central Government, has been directed under Sub-section (4) to be exercised or discharged by the Provincial Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority, not being (except in the case of a Chief Commissioner's province) an officer or authority subordinate to the Central Government."

The general law in regard to such delegation of authority is, however, contained in Huth v. Clarke, (1890) 23 Q. B. D. 391. That was a case under the Contagious Diseases (Animals) Act, 1878, under Schedule 6, Clauses 5 and 6 of which a local authority may appoint an executive committee, which is to have all the powers of the local authority with certain exceptions, and the executive committee may appoint sub-committees and delegate to them all or any of the powers of the executive committee with or without restrictions, and may from time to time revoke or alter any such delegation. The duly appointed executive committee of a county council made an order delegating to local sub-committees its powers under the Act and under certain Orders in Council, including the Rabies Order, 1887. Subsequently to such delegation the executive committee, without expressly revoking the delegation, issued certain regulations under the Rabies Order, 1887. The question was whether it had the authority to issue such regulations. The contention was that delegation implies a temporary abdication or denudation of power and that the powers so delegated cannot be resumed until the delegation has been specifically revoked. The Court held that "delegation," as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself. The following may be quoted from the judgment of Wills, J:

> "The case really turns on the meaning of the word 'delegate,' a word which has appeared on the statute-book for the last thirty years, occurring, as it does, at least as far back as 24 & 25 Vict., c. 133, Schedule part 2 (6). Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself. The best illustration of the use of the word is afforded by the maxim, Delegatus non potest delegare, as to the meaning of which it is significant that it is dealt with in Broom's Legal Maxims under the law of contracts : it is never used by legal writers, so far as I am aware, as implying that the delegating person parts with his power in such a manner as to denude himself of his rights. If it is correct to use the word in the way in which it is used in the maxim, as generally understood, the word 'delegate' means little more than an agent. The notion, therefore, that the use of the word 'delegate' implies that the executive committee parted with their own authority is misconceived. The provisions of Section 201, Public Health Act, 1875, which have been relied on for the appellant, are in my

> opinion as much against as for him, although there are certain words in the section which seem to shew that in that particular case the body to which the delegation was made was to be the only authority to exercise the power."

It would thus appear that the District Magistrate cannot, in the present case, be said to have deprived himself of the power to perform his functions under Section 3 of the Act after he had authorised the Rent Control and Eviction Officer to perform those functions.

4. It is, however, argued that the Rent Control and Eviction Officer was in the nature of an agent and that the District Magistrate had the power to correct or amend any orders passed by him. But the Rent Control and Eviction Officer cannot be regarded as an agent of the District Magistrate in any sense. No doubt, in accordance with the judgment of Wills J. the word "delegate" means 'little more than an agent.' But he does not seem to have used the word 'agent' in any technical or legal sense and the language used in Clause (d) of Section 2 of Act III [3] of 1947 does not contain in it any idea of agency. It defines the 'District Magistrate' as a term which includes an officer authorised by the District Magistrate to perform any of his functions under the Act. It would thus appear that the District Magistrate and the officer authorised by him to perform any of his functions under the Act have been placed on an equal footing and wherever the term 'District Magistrate' has been used in the Act it would include such officer also, and either of them would thus be able to perform the functions which have been assigned to the District Magistrate under the Act.

5. The question, however, is whether the District Magistrate has or has not the power to cancel an order passed by such officer. Section 21, U. P. General Clauses Act, 1904, provides that where "a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, emend, vary, or rescind any notifications, orders, rules or bye-laws so issued."

Under this provision the Rent Control and Eviction Officer could presumably rescind the order which had been previously passed by him. But the provision contained in this section cannot be interpreted as authorising the District Magistrate to rescind any order previously passed by the Rent Control and Eviction Officer under the authority given to him under Section 2 (d) of the Act. The power to add to, amend, vary or rescind is to be exercised "in the like manner". The power exercised by the District Magistrate in cancelling the order previously passed by the Rent Control and Eviction Officer was in the nature of an appellate or revisional power which cannot be exercised in the absence of an express statutory enactment. No power is given under the Control of Rent and Eviction Act to any authority to sit in appeal or revision against an order passed by the "District Magistrate" under Section 3 of the Act and the District Magistrate could not, therefore, revise the order of the Rent Control and Eviction Officer passed on 28th April 1947. It is significant that Lord Coleridge C. J. in his judgment in Huth v. Clarke, (1890) 23 Q. B. D. 391 makes particular mention of the fact that when the executive committee issued certain regulations under the Rabies Order no regulations had in fact been issued by the sub-committee and that "no question of conflict of jurisdiction arises."

6. A perusal of the record shows that the District Magistrate cancelled the order of the Rent Control and Eviction Officer on an application made to him on behalf of the respondent in which he had specially requested him to revise the order previously passed by that Officer. In my view the order passed by the District Magistrate on 24th July 1947, was not authorised by the Act. Reference has been made to Section 16 of the Act which provides that no order made under the Act by the Provincial Government or the District Magistrate shall be called in question in any Court. But from what has been said above it would appear that the order passed by the District Magistrate on 24th July 1947, cannot be regarded as an order made under the Act and Section 16 will, therefore, not apply.

7. I, therefore, agree with the conclusion arrived at by the learned District Judge that the subsequent revocation of the permission granted by the Rent Control and Eviction Officer on 28th April 1948, with respect to the institution of the suit by the respondent, by the District Magistrate is without effect.

8. I would accordingly dismiss the appeal with costs.

9. A cross-objection has also been filed on behalf of the respondent but it is not pressed and will also be dismissed with costs.

Chandiramani, J.

10. I agree.

11. By the Court.--The appeal and the cross-objection are both dismissed with costs.

12. The appeal having been dismissed, the order staying the execution of the decree is discharged.