

## **Mst. Sarojini Devi vs Rent Control And Eviction Officer, ... on 18 August, 1955**

**Equivalent citations: AIR1956ALL100, AIR 1956 ALLAHABAD 100**

ORDER

Mehrotra, J.

1. This is an application under Article 226 of the Constitution praying that a writ of Certiorari quashing the order dated 30-11-1954 passed by the Munsif West Allahabad by which he ordered the ejectment of the petitioner from the house No. 8 Lowther Road Allahabad be issued.

2. The facts disclosed in the affidavit filed in support of the petition are that one Pt. Laxmi , Narain Tiwari had taken plot No. 55 George Town Allahabad under a lease dated 13-7-1915 and had constructed a house on the said plot which was subsequently numbered 8, Lowther Road. He died in the year 1925 leaving behind his widow Mst. Ganga Devi and four daughters Mst. Manorama Devi Shanti Devi, Sarojini Devi, Ram Shri Devi. They were all unmarried at the time of his death.

The petitioner, as will appear from the affidavit mentioned above, is the third daughter of late Pt. Laxmi Narain Tiwari. Certain sum of money was left by him in cash in the Allahabad Bank and also a Printing Press called the George Town Printing Works Allahabad. The press it is alleged was run by Sri Khalil Uddin who subsequently turned out to be dishonest in collusion with the widow and squandered away all the property of Pt. Laxmi Narain Tiwari and in the year 1942 only the house No. 8 Lowther Road remained with the family with an encumbrance of Rs. 22,000/-.

The eldest daughter was married in 1927, the second daughter was married in 1934 and the applicant and her younger sister the fourth daughter were married in 1940. In 1946 a suit was brought by the present applicant for a declaration that the debt of Rs. 22,000/- incurred by Mst. Ganga Devi widow of Pt. Laxmi Narain Tiwari was not binding upon the reversioners. To this suit were impleaded the auction purchasers and the decree-holder of bungalow No. 8, Lowther Road and one Jagdamba Prasad purchaser of mortgagee right from the widow of one Bhole Lal Tamoli who was one of the creditors of Mst. Ganga Devi, widow of late Pt. Laxmi Narain Tiwari.

The three other daughters of late Pt. Laxmi Narain Tiwari and his elder brother were impleaded as pro forma defendants to the suit. In execution of the decree the house had been auctioned on 29-5-1946. That suit is alleged to have been decreed except in respect of an item of Rs. 11,000/- for which amount existed a mortgage-deed executed some time in the year 1931. A first appeal was filed against the aforesaid decision of the Civil Judge regarding the sum of Rs. 11,000/- in this Court.

During the pendency of the aforesaid appeal in this Court the auction purchaser Premnath filed an application under Section 7B, Rent Control and Eviction Act, 1947 in the Court of Munsif West Allahabad for realisation of rent from the applicant and Sri Ram Naresh Upadhya alleged to be a sub-tenant of the applicant amounting to Rs. 550/-. A notice of the aforesaid application was received by the applicant some time in March 1953. On this notice she was required either to deposit Rs. 550/- or furnish security, for the said amount by 28-3-1953 in the Court of Munsif, West Allahabad.

On 17-3-1953 an objection was filed by the applicant to the application, under Section 7B to the Rent Control and Eviction Act on the ground that the applicant Premnath was not the landlord within the meaning of the Rent Control and Eviction Act as "the title to the property in question was being challenged by the applicant and other sisters in Suit No. 11 of 1946.

As regards Sri Ram Naresh Upadhya it was alleged that he was in occupation of one of the rooms in the said house under an allotment order issued in his favour by the Rent Control and Eviction Officer and he was not a sub-tenant and that the opposite party Premnath was not a landlord. She herself claimed to be the landlord of the premises. During the pendency of these proceedings Ganga Devi widow of Pt. Laxmi Narain died and the applicant was in sole possession of the aforesaid premises.

On 28-3-1953 when the matter came up for hearing before the Munsif her objections were not allowed to be heard unless she deposited the money claimed in the notice. On this the counsel for the applicant prayed for some time to deposit the money. The Munsif gave 15 days' time to deposit the money in cash. The order passed by the Munsif on 28-3-1953 has been quoted in para 21 of the affidavit filed by the petitioner.

A writ petition was filed under Article 226 of the Constitution against the aforesaid order of the Munsif praying that a writ of Certiorari be issued quashing the order dated 28th March of the Munsif West and also for the issue of a writ of Mandamus to compel the Munsif to decide the question whether the petitioner was tenant of respondent 2, and whether she was the landlord of the house.

3. By an order dated 12-11-1954 this petition was rejected on the ground that certain relevant facts had been suppressed in the petition and that the order which was sought to be quashed was an order based on the consent of the parties. A special appeal was filed against the aforesaid order of a single Judge of this Court which was again dismissed on 24-1-1955.

Thereafter on 12-2-1955 the petitioner received a communication from the office of the Rent Control and Eviction Officer, Allahabad to the effect that Munsif West by his order dated 30-11-1954, passed under Section 7 (7B?), Rent Control and Eviction Act had ordered the eviction of the applicant from the house. By the said order the Munsif had further authorised the use of the police force for the ejection of the petitioner.

During the pendency of the writ petition in this Court a suit had been filed by the applicant in the Court of the Civil Judge, Allahabad by which she challenged the auction of the house held in 1946 on the ground of fraud. After the receipt of the communication from the Rent Control & Eviction Officer on 12-2-1955 an application for interim injunction was filed in the suit. An interim injunction was granted by the Judge which was ultimately rejected on 9-4-1955. The first appeal which was filed against the decision of the Civil Judge, in suit No. 11 of 1946 was dismissed by this Court on 29-3-1955 for deficiency of court-fee.

4. A number of points have been urged by the counsel for the petitioner. Firstly it is contended that the proviso to Section 7B Sub-section (7), Rent Control and Eviction Act is ultra vires under the provisions of Articles 14 and 19 of the Constitution.

Secondly it is contended that the United Provinces Temporary Control of Rent and Eviction Act, 1947 as amended by the U. P. Temporary Control of Rent and Eviction (Amendment) Act of 1948 ceased to have the force of law on 30-9-1952 and the U. P. Temporary Control of Rent and Eviction (Amendment) Act, 1952 which came into force on 1-10-1952 could in no case continue the aforesaid Act which on the expiry of 30-9-1952 became dead.

On this ground the validity of the Act of 1952 has been challenged. The order passed by the Munsif of 30-9-1952 has also been attacked on the ground that it does not conform to the provisions of Section 7B of the Act.

5. The Standing Counsel who represents the opposite party raises certain preliminary objections to the maintainability of the present petition. He urged that in view of the decision of this Court in the earlier writ petitions it is not open to the petitioner to challenge any more the order passed by the Munsif on 28-3-1953 and the present order of ejectment of the 30th November has only been passed in consequence of the order of 28-3-1953.

The order dated 28-3-1953 was passed by the Munsif granting time to the applicant to deposit the arrears of rent claimed. It was further provided in the order that in case of failure to deposit the amount the application made by the opposite party will stand allowed. That was passed on a compromise and as the petitioner failed to deposit the amount the present ejectment order was passed as a consequence of the failure of the applicant to carry out the order passed on 28-3-1953.

6. As regards the first contention of the petitioner that the proviso to Section 7B Sub-section (7) of the Rent Control Act is ultra vires as it infringes Article 14 of the Constitution, the argument is that the proviso discriminates between a tenant and a landlord. The tenant cannot get a relief unless he deposits a security of the amount specified in the notice. He has been placed in a disadvantageous position and having regard to the subject-matter of the provision of the Act there is no reasonable classification.

A tenant who is as much a party to the proceedings as the landlord has been discriminated under the provisions of the Act. This argument appears to be attractive but there is no substance in the said argument. Article 14 of the Constitution provides that the State shall not deny any person equality of

the law or the equal protection of laws within the territory of India.

The mere differentiation in the Act does not make a legislation obnoxious. The equal [protection of the laws means protection of equal laws. It forbids class legislation but does not forbid classification which rests upon reasonable ground for distinction. It does not prohibit legislation which is limited either for the object to which it is directed or the territory within which it is to operate.

It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed. The Act is for universal application. Section 7B applies to all tenants and all landlords alike. It makes no differential treatment between one citizen and the other and therefore the fact that one of the parties to the application is not given a right to file objection unless he deposits an amount of money specified in the notice served on him does not mean that the legislation is a discriminatory legislation.

All persons have been treated alike. The proviso is therefore not hit by Article 14 of the Constitution. It does not appear how the proviso infringes Article 19 of the Constitution. The fundamental rights guaranteed under the provisions of Article 19 cannot at all be affected by the provisions of Section 7B.

7. The main contention of the applicant is that the Act of 1947 expired on 30-9-1952. The Amending Act came into operation from 1-10-1952. There is no dispute that the Act of 1947 expired on the midnight of 30-9-1952. Section 1 of the Amending Act 14 of 1952 by which the U. P. Temporary Control of Rent and Eviction Act has been amended provides that this Act shall come into force with effect from 1-10-1952.

Section 5, U. P. General Clauses Act provides that when the New State Act is not expressed to come into operation on a particular day then it shall come into operation if it is an Act of the Legislature on the day on which the assent of the Governor is first published in the Official Gazette. Under Section 5, General Clauses Act unless the contrary is expressed, Uttar Pradesh Act shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

It is therefore plain that the Amending Act came into operation immediately after the midnight of 30-9-1952 and simultaneously with the expiry of 1947 Act on the midnight of 30th September the Amending Act of 1952 came into operation. The Amending Act of 1952 was, therefore, validly passed and it did not revive any dead Act. It only continued the Act of 1947.

Reliance has been placed on the case of -- 'Ram Kishan v. State', AIR 1951 All 181 (FB) (A) and -- 'Brahmeshwar Prasad v. State of Behar', AIR 1950 Pat 265 (B). These were the cases where the Amending Act came into operation at a time when the original Act had already expired and not simultaneously with the expiry of the previous Act.

8. Apart from this it is not open to the petitioner to ask for a direction from this Court for quashing the order of 28-3-1953 now, when his previous writ petition had already been dismissed for the

same relief and the order of the Civil Judge had been affirmed in the Special Appeal. In fact the relief claimed in the present petition is the same as was claimed in the earlier petition viz. that the order of the 28th March was an invalid order and in view of the decision in the earlier petition the relief cannot be granted to him now. The present order of ejectment is merely a consequential order on the failure of the applicant to carry out the terms of the order of 28-3-1953, based on the consent of the parties. It is, therefore, not an independent order under Section 7B, Sub-section (5) for ejectment but is only a consequential order.

9. There is, therefore, no force in this petition and it is rejected with costs.