

Mohammad Ismail vs Nanney Lal on 7 March, 1969

Equivalent citations: 1970 AIR 1919, 1969 SCR (3) 894, AIR 1970 SUPREME COURT 1919

Author: G.K. Mitter

Bench: G.K. Mitter, M. Hidayatullah, J.C. Shah, V. Ramaswami, A.N. Grover

PETITIONER:
MOHAMMAD ISMAIL,

Vs.

RESPONDENT:
NANNEY LAL

DATE OF JUDGMENT:
07/03/1969

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
HIDAYATULLAH, M. (CJ)
SHAH, J.C.
RAMASWAMI, V.
GROVER, A.N.

CITATION:
1970 AIR 1919 1969 SCR (3) 894
1969 SCC (1) 727
CITATOR INFO :
R 1972 SC1910 (13)

ACT:
U.P. (Temporary) Control of Rent & Eviction Act (U.P. 7 of 1947), s. 7-F-Suit for eviction filed after obtaining permission by Commissioner--Permission revoked by State Government-Whether suit incompetent.

HEADNOTE:
The U.P. (Temporary) Control of Rent & Eviction Act, 1947, restricts the rights of landlords to institute suits for eviction of their tenants to cases covered by s. 3 (1) (a) to (g) except with the permission of the District Magistrate. The District Magistrates order granting the

permission is expressly made subject to any order by the Commissioner under s. 3(2) provided the aggrieved party applies within 30 days to the Commissioner to revise the order. The Commissioner must ordinarily dispose of the application within six weeks. Section 7-F of the Act confers revisionary powers on the State Government in any case granting or refusing to grant permission, and under s. 3(4) the order of the Commissioner under s. 3 (3) is to be final subject to the order under s. 7-F. The respondent-landlord obtained permission of the District Magistrate to file a suit for eviction of the appellant-tenant under s. 3(1) of the Act. The tenant applied to the Commissioner under s. 3(2) and the Commissioner dismissed the application. The tenant then filed a further revision application to the State Government under s. 7-F. Before the disposal of the last revision application, the landlord filed a suit for ejectment in pursuance of the permission given by the Commissioner. Thereafter the State Government set aside the order of the Commissioner and revoked the permission granted to the landlord. On the question whether the suit filed, after obtaining the permission of the Commissioner became incompetent on the making of an order by the State Government under s. 7-F cancelling the permission to sue given by the Commissioner, this Court, HELD : The suit validly instituted after obtaining permission as required by s. 3 did not cease to be maintainable even if the State Government thereafter revoked the permission granted.

Under sub-s. (1) of s. 3 the maintainability of a suit on grounds other than those mentioned in cls. (a) to (g) is made expressly 'subject to an order under sub-s. (3). The Legislature did not provide that the right to file a suit would be subject to or dependent upon an order under s. 7-F in the same way as an order under s. 3(3). [898 A]

When a landlord files a suit for eviction only with the permission of the District Magistrate, he is conscious of the fact that such permission may be revoked by the Commissioner at the instance of the tenant within ten weeks of its institution. But 'so far as the revisional powers of the State Government are concerned, there is no time limit fixed either for application by an aggrieved party or for the disposal thereof. It may be made at any time and the State Government is further authorised by this section (s. 7-F) to act suo motu. In such a state of affairs, it cannot be held that the landlord must wait indefinitely and find out whether the

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permission granted to him will be upheld by the State Government should the tenant make an application for revision of the order of the Commissioner. [898 C]

Apart from the above consideration, the words in s. 7-F indicate that the State Government can only exercise its Jurisdiction to revise the order of the Commissioner before

the actual institution of the suit. The language of s. 7-F does not seem to be aimed at invalidating a suit already instituted and can only operate at a stage before the landlord launches his proceedings. There is nothing in sub-s. (4) of s. 3 read with s. 7-F to show that the landlord should wait till the powers of the revising authorities have been exhausted. If the Legislature had so intended, it could have used suitable words in sub-s. (1) of s. 3 to indicate that the grant of permission by the District Magistrate would also be subject to an order under s. 7-F. [898 F]

The Legislature had provided for a decree for eviction of a tenant passed before the commencement of the Act liable to be rendered inexecutable unless it was based on any of the grounds mentioned in sub-s. (3). The Legislature might, if so advised, have provided for a similar result in a case where the State Government had revoked the permission to sue granted by the Commissioner. It would make a mockery of the judicial process if it were to be held on the language of the sections as they stood, that irrespective of a decree being passed by the trial court being upheld in appeal by the High Court or by this Court, the order of the State Government would nullify all proceedings. Once the jurisdiction under s. 16 was properly exercised the Court cannot examine the propriety of the order made thereunder. [899 B-D; 900 B]

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

Shri Bhagwan v. Ram Chand [1965] 3 S.C.R. 218 and Bansi Ram v. Mantri Lal, I.L.R. [1965] 1 Allahabad 545, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 263 of 1969. Appeal by special leave from the judgment and order dated December 13, 1968 of the Allahabad High Court in Second Appeal No. 3474 of 1963.

J.P. Goyal, G. N. Wantoo and V. C. Parashar, for the appellant.

K. P. Gupta, for the respondent.

The Judgment of the Court was delivered by Mitter, J. The question in this appeal by special leave is, whether a suit for eviction of a tenant by a landlord, after obtaining the permission of the Commissioner under sub-s. (3) of s. 3 of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 becomes incompetent, on the making of an order by the State Government under s. 7-F cancelling the permission to sue given by the Commissioner. The relevant facts for disposal of this appeal are as follows. The respondent-landlord obtained permission of the District Magistrate to file a suit for eviction against the appellant under s. 3(1) of the Act on May 29, 1961. The tenant went up to the Commissioner of Agra Division under s. 3(2) of the Act. On July 26, 1961 the

Commissioner dismissed the revision application. The tenant then filed a further revision application to the State Government under s. 7-F of the Act. Before the disposal of the last revision application, the landlord filed a suit for ejectment on January 18, 1962 in the court of the Munsif, Etah in pursuance of the permission given by the Commissioner. On June 16, 1962 the, State Government set aside the order of the Commissioner and revoked the permission granted to the landlord. The suit was dismissed by the Munsif of Etah on November 17, 1962. The Civil Judge of Etah allowed the appeal of the landlord on September 28, 1963. The tenant went up in Second Appeal to the High Court. On December 13, 1968 a learned single Judge of the Allahabad High Court dismissed the tenant's appeal following a judgment of this Court in Bhagwan Das v. Paras Nath(1). Learned counsel for the appellant contended that some aspects of the question had not been raised before and/or considered by this Court on the prior occasion which might have induced the Court to come to a different conclusion. Having heard counsel at some length, we are convinced that there is no merit in his submissions. We respectfully agree with the decision in Bhagwan Das's case(2) and are satisfied that counsel has not been able to show that any relevant aspect of the question was not considered on the former occasion. There was no unanimity of opinion in the Allahabad High Court as regards the effect of an order passed by the State Government contrary to the Commissioner's order on the basis of which a suit for eviction was filed in the subordinate courts. So far as the High Court was concerned, the matter was laid at rest by a Full Bench decision in the case of Bansī Ram v. Mantri Lal(2). This Court while not concurring with all that was said in Bansī Ram's case(3) agreed with the Full Bench that a suit validly instituted after obtaining permission as required by s. 3 did not cease to be maintainable even if the State Government thereafter revoked the permission granted.

Section 3(1) of the Act restricts the rights of landlords to institute suits for eviction of tenants to cases covered by clauses (a) to (g) of that sub-section except with the permission of the District Magistrate. The words of this subsection are imperative and show that no such suit can be filed without the permission of the said authority. Under the Transfer of Property Act the only pre-requisite to the institution of a valid suit for eviction of a monthly tenant is the service of a proper notice to quit. The (1) [1969] 2 S.C.R. 297.

(2) I.L.R. [1965] 1 Allahabad 545.

landlord is not obliged to make out any ground For such eviction. Where he seeks to eject a tenant and can make out a case which falls within any of the sub-clauses (a) to (g), he need not approach the District Magistrate for permission to sue. It follows that the District Magistrate must consider the justification for the institution of a suit in all other cases. His order is expressly made subject to any order under sub-s. (3) of the section. In order that power under the latter sub-section can be exercised, it is necessary for the aggrieved party to apply to the Commissioner to revise the order of the Magistrate by making an application under sub-s. (2) of the section within 30 days from the date on which the order is communicated to him. Sub-s. (3) enjoins upon the Commissioner to hear the application, as far may be, within six weeks from the date of making it and his powers in this regard are not subject to any limitation. A landlord may file a suit for eviction on getting the permission of the District Magistrate to do so but he runs the risk of such permission being revoked by the Commissioner in which case his suit will become infructuous as by the express words of sub-s. (1)

the permission of the District Magistrate is made subject to revision by the Commissioner. The question arises whether the same result will follow if the order of the Commissioner is in its turn upset by the State Government acting under s. 7-F and whether sub-s. (4) of s. 3 should be so construed. In our opinion, an order under s. 7-F cannot affect a suit filed prior thereto if the landlord has obtained the necessary sanction from the Commissioner. The relevant portion of the sections are quoted below* for facility of reference. *(3) Restrictions on eviction.-(1) Subject to any order passed under subsection (3) no suit shall, without the permission of the District Magistrate, be filed in any civil court against a tenant for his eviction from any accommodation, except on one or more of the following grounds

(a) to (g)..... (2)Where any application has been made to the District Magistrate for permission to sue a tenant for eviction from any accommodation and the District Magistrate grants or refuses to grant the permission, the party aggrieved by his. order may, within 30 days from the date on which the order is communicated to him, apply to the Commissioner to revise the order.

(3)The Commissioner shall hear the application made under sub-section (2), as far as may be, within six weeks from the date of making it, and he may, if he is not satisfied 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 alter or reverse his order, or make such other order as may be just and proper. (4)The order of the Commissioner under subsection, (3) shall, subject to any order passed by the State Government under section 7-F be final.

7-F.-Revision to State Government-Me State Government may call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in Section 3 or requiring any accommodation to be let or not to be let to, any person under Section 7 or directing a person to vacate any accommodation under Section 7-A and may make such order as appears to it necessary for the ends of justice.

Under sub-s: (1) the maintainability of a suit on grounds other than those mentioned in cls. (a) to (g) is made expressly subject to an order under sub-s. (3). It will be noted that the Legislature has conferred various powers on the State Government besides the power to reverse orders under section 3. For reasons of its own the Legislature did not provide that the right to file a suit would be subject to or dependent upon an order under s. 7-F in the same way as an order under section 3 (3).

Various reasons were given by this Court in Bhagwan Das's case⁽¹⁾ for coming to, the conclusion that s. 7-F was not to be construed in the same way as s. 3(3) and we are in entire agreement therewith. When a landlord filed a suit for eviction only with the permission of the District Magistrate he knows that it would be open to the tenant to ask for revocation of the permission by an application to the Commissioner within 30 days from the communication of the order of the District Magistrate to him. He is also aware that the Commissioner must, except for unavoidable reasons, hear the application and dispose of it within six weeks thereafter. At the most, therefore, he has to wait for about ten weeks from the order of the District Magistrate granting permission to find out whether he can safely institute a suit. But so far as the revisional powers of the State

Government are concerned, there is no time limit fixed either for application by an aggrieved party or for the disposal thereof. It may be made at any time and the State Government is further authorised by this section (s. 7-F) to act suo motu. In such a state of affairs, it would not be right to hold that the landlord must wait indefinitely and find out whether the permission granted to him will be upheld by the State Government should the tenant make an application for revision of the order of the Commissioner.

Apart from the above consideration, the words of s. 7-F in our opinion, indicate that the State Government can only exercise its jurisdiction to revise the order of the Commissioner before the actual institution of the suit. The language of s. 7-F shows that on the facts of the case before it the State Government must consider whether the grant of or refusal to grant permission for the filing of a suit should be upheld or not. The section does not seem to be aimed at invalidating a suit already instituted and can only operate at a stage before the landlord launches his proceeding. There is nothing in sub-s. (4) of s. 3 read with s. 7-F to show that a landlord should wait till the powers of the revising authorities have been exhausted. If the Legislature had so intended, it could have used words in sub-s. (1) of s. 3 to indicate that the grant of permission by the District Magistrate would also be subject to an order under s. 7-F. The same result might have been achieved by providing for the stay of a suit in case the State (1) [1969] 2 S.C.R. 297.

8 99 Government made an order under s. 7-F contrary to that of the Commissioner.

Once a suit is validly instituted it must take its course and the decree passed therein must be given effect to unless the words of the statute render the decree inexecutable or liable to re-opening in a proper case, on grounds mentioned in the statute. It was pointed out by this Court in Bhagwan Das's case⁽¹⁾ that the Legislature had provided for a decree for eviction of a tenant passed before the commencement of the Act liable to be rendered inexecutable unless it was based on any of the grounds mentioned in sub-s. (3). The Legislature might, if so advised, have provided for a similar result in a case where the State Government had revoked the permission to sue granted by the Commissioner. It was also pointed out in Bhagwan Das's case⁽¹⁾ that it would make a mockery of the judicial process if we were to hold on the language of the sections as they stand at present, that irrespective of a decree being passed by the trial court being upheld in appeal by the High Court or by this Court, the order of the State Government would nullify all proceedings.

There is nothing in the judgment of this Court in Shri Bhogwan v. Ram Chand⁽²⁾ read with section 16(3) of the Act which would incline us to come to any different conclusion. On the strength of the decision in that case read in the light of s. 16, it was argued that the order of the State Government being quasi-judicial in nature s. 16 (inset) placed the order of the State Government beyond the pale of scrutiny by a court of law. We cannot see any force in this argument. The permission to sue given by the Commissioner has no effect on the course of the trial of the issues involved in that suit. That permission is only a pre-requisite to a suit as a notice under s. 80 of the Code of Civil Procedure. The court trying the suit for eviction has to find out whether a proper notice to quit was given and whether the tenancy was properly determined. It must also examine the grounds on the basis of which the landlord seeks to evict the tenant and decide for itself whether such grounds exist. Neither the District Magistrate nor the Commissioner nor the State Government is obliged to disclose any

reasons which may influence the said authorities in coming to their decision and the court is not called upon to examine whether the conclusion of any of the said authorities was properly arrived 'at.

Learned counsel for the appellant would have us hold that (1) [1969] 2 S.C.R. 297.

(2) [1965] 3 S.C.R. 218.

L11 Sup.Cl/69-8 s.16* ousted the jurisdiction of the Court to consider the propriety of any order of the State Government. In our view, that is not the effect of that section. The decision in Shri Bhagwan v. Ram Chand (supra) shows that the State Government must offer a reasonable opportunity to both the parties while it exercises its jurisdiction under s. 7-F and an order which is made in violation of the principles of natural justice may be quashed. Once the jurisdiction under s. 16 is properly exercised the court cannot examine the propriety of the order made thereunder.

In the result, the appeal fails and is dismissed with costs. Two is only exercisable at a point of time anterior to the filing of a suit and courts of law can therefore disregard any order under that section which is Made after the filing of a suit.

In the result, the appeal fails and is dismissed with costs. Two months time granted from today for vacating subject to payment of rent and an undertaking given that the property would be handed over peacefully within that time.

Y.P. Appeal dismissed.

*Section 16. Orders under the Act not to be questioned in any Court.No order made under this Act by the State Government or the District Magistrate shall be called in question in any court.