

Vijendra Nath & Ors vs Jagdish Rai Aggarwal & Ors on 2 December, 1966

Equivalent citations: 1967 AIR 600, 1967 SCR (2) 138, AIR 1967 SUPREME COURT 600

Author: R.S. Bachawat

Bench: R.S. Bachawat, J.M. Shelat

PETITIONER:
VIJENDRA NATH & ORS.

Vs.

RESPONDENT:
JAGDISH RAI AGGARWAL & ORS.

DATE OF JUDGMENT:
02/12/1966

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
SHELAT, J.M.

CITATION:
1967 AIR 600 1967 SCR (2) 138

ACT:
Slum Areas (Improvement and Clearance) Act (96 of 1956), s. 19-Section requiring landlord to obtain permission of competent authority before executing eviction decree against tenant-Execution application filed after complying with section-Application consigned to records pending tenant's appeal against decree-S. 19 amended pending appeal-Fresh execution application filed after dismissal of appeal-Whether can be filed without obtaining fresh permission under amended section.

HEADNOTE:
The predecessor in interest of the appellants was a tenant in a slum area in Delhi under the respondents. On December 5, 1960 the respondents obtained a decree for eviction against the tenant. On June 19, 1964, the respondents

obtained permission for the execution of the decree from the competent authority under s. 19 of the Slum Areas (Improvement and Clearance) Act, 1956 (Act of 96 of 1956). On or about July 22, 1964 the respondents applied for execution of the decree, The tenants objections to the execution application failed and his appeal and thereafter a revision before the High Court also failed. During the pendency of the tenant's appeal the application for execution filed on July 22, 1964 was consigned to the record room. For this reason on March 23, 1965 after the decision of the High Court the respondents filed another application for execution of the decree. Meanwhile s. 19 of the Slum Areas Act had been amended by Act 43 of 1964. The tenant filed fresh objection,,, to the execution application dated March 23, 1965 contending that the respondents were not entitled to execute the decree without obtaining a fresh permission from the competent authority under the new s. 19. The objections were dismissed. On the High Court also deciding against the tenant, the appellant who had meanwhile been brought on -record as his legal representatives, came to this court by special leave.

HELD : The new section 19 inserted by the Amending Act did not affect a pending execution proceeding either expressly or by necessary implication and made no change in the law applicable to the proceeding. It did not provide for stay of the pending proceeding nor did it otherwise show any clear intention to vary the rights of the parties in the 141 G-H]

The rights of the parties in the pending 'application had to be according to the law as it existed on July 22, 1964, when the was filed and the execution of the decree commenced. Under the law then in force the application was competent. The objections by the tenant were therefore rightly dismissed. [142 B]

JUDGMENT:

CIVIL, APPELLATE JURISDICTION : Civil Appeal No. 1314 of 1966.

Appeal by special leave from the judgment and order dated December 15, 1965 of the Punjab High Court at Delhi in Civil Revision No.393-D of 1965.

P. S. Safeer, for the appellants.

I. M. Lall and O. P. Verma, for the respondents.

The Judgment of the Court was delivered by Bachawat, J. One S. N. Bhatnagar was the tenant of a building in a slum area in Delhi under the respondents. On December, 5, 1960, the respondents obtained a decree for eviction of the tenant. By this decree, the tenant was allowed time to vacate till

March 2, 1963. On June 19, 1964, the respondents obtained the permission for the execution of the decree from the competent authority under s. 19 of the Slum Areas (Improvement and Clearance) Act, 1956, (Act No. XCVI of 1956). Section 19 as it stood before December, 21 1964 was in these terms :-

"19. (1) Notwithstanding anything contained in any other law for the time being in force, no person who has obtained any decree or order for the eviction of a tenant from any building in a slum area shall be entitled to execute such decree or order except with the previous permission in writing of the competent authority.

(2) Any person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the competent authority in such form and containing such particulars as may be prescribed.

(3) On receipt of such application the competent authority, after giving an opportunity to the tenant of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall by order in writing either grant such permission or refuse to grant such permission. (4) Where the competent authority refuses to grant the permission it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant."

Before us, learned counsel on both sides agreed that on or about July 22, 1964, the respondents applied for execution of the decree. The tenant filed objections to the execution application. The objections were dismissed on August 7, 1964. An appeal against this order was dismissed on March 19, 1965, and a revision petition to the High Court was dismissed on March 24, 1965. In the meantime the Slum Areas (Improvement and Clearance) Amendment Act, 1964 (Act No. XLIII of 1964) which came into force on December 21, 1964, substituted for section 19 of the principal Act the following section :--

"19. Proceedings for eviction of tenants not to be taken without permission of the competent authority-(I) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority,-

(a) institute, after the commencement of the Slum Areas (Improvement and Clearance) Amendment Act, 1964, any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or

(b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order.

(2) Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the competent authority in such form and

containing such particulars as may be prescribed.

(3) On receipt of such application, the competent authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall by order in writing, either grant or refuse to grant such permission (4) In granting or refusing to grant the permission under sub-section (3), the competent authority shall take into account the following factors, namely,-

(a) whether alternative accommodation within the means of the tenant would be available to him if he were evicted;

(b) whether the eviction is in the interest of improvement and clearance of the slum areas;

(c) such other factors, if any, as may be prescribed.

(5) Where the competent authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the appellant."

During the pendency of the appeal from the order dated August 7, 1964, the application for execution filed on July 22, 1964, had been consigned to the record room. For this reason on March 23, 1965, the respondents filed another application for execution of the decree. The object of this application was to revive the substantive application for execution which was filed on July 22, 1964 and which was still pending. The application made on March 23, 1965, must be regarded as a continuation of the execution proceeding commenced on July 22, 1964. The tenant filed fresh objections to the execution of the decree. He contended that the respondents were not entitled to execute the decree without obtaining a fresh permission from the competent authority under the new s. 19 inserted by the Slum Areas (Improvement and Clearance) Amendment Act, 1964. The objections were dismissed by the executing court on April 27, 1965. The order was confirmed by the appellate court on June 9, 1965. A revision petition to the High Court was dismissed on December 15, 1965. During the pendency of the revision petition the tenant died and the appellants were brought on the record as his legal representatives. The appellants have now filed this appeal by special leave.

Sub-section (1)(a) of section 19 inserted by the Amending Act bars the institution of any suit for obtaining a decree for the eviction of any tenant from any building in a slum area after the commencement of the Amending Act without the previous permission in writing of the competent authority. This provision has no application to the present case because before the commencement of the Amending Act the respondents had instituted a suit and obtained a decree for the eviction of the tenant. Sub-section 1(a) of the newly inserted s. 19 imposes a bar on the execution of a decree for the eviction of a tenant from any building in a slum area obtained in any suit instituted before the commencement of the Amending Act without the previous permission in writing of the competent

authority. The bar under section 19 operates notwithstanding anything contained in any other law for the time being in force. In granting or refusing the permission under the new section 19, the competent authority is required to take into account certain matters which it was not bound to take into account under the repealed section 19. Now on July 22, 1964 before the commencement of the Amending Act, the respondents had filed the application for execution of the decree for eviction of the tenant after obtaining the requisite permission of the competent authority under the repealed section 19. Under the law then in force, this application for execution was competent. The question is whether this application is rendered incompetent by the absence of a fresh permission from the competent authority under the newly inserted section 19.

Unless the Amending Act affects the pending execution proceeding by express words or by necessary implication, the rights of the parties in the pending proceeding must be decided according to the law in force at the time when the proceeding was commenced and the decree-holder will be entitled to continue the proceeding without obtaining a fresh permission from the competent authority. We think that the new section 19 inserted by the Amending Act does not affect a pending execution proceeding either expressly or by necessary implication and makes no change in the law applicable to the proceeding. The newly inserted section 19 does not provide for stay of the pending proceeding nor does it otherwise show any clear intention to vary the rights of the parties in the proceeding. If we are to hold that the pending application for execution is liable to be dismissed in the absence of the previous permission of the competent authority under the newly inserted section 19, the decree-holder would be entirely without a remedy in a case where a fresh application for execution would be barred by limitation. The legislature could not have intended such a result. The rights of the parties in the pending application must be decided according to the law as it existed on July 22, 1964, when the application was filed and the execution of the decree commenced. Under the law then in force, the application was competent. The objections filed by the tenant were, therefore rightly dismissed by the courts below.

In the result the appeal is dismissed with costs. G.C. Appeal dismissed.