Supreme Court of India
Smt. Prabhawati vs Dr. Pritam Kaur on 24 March, 1972
Equivalent citations: AIR 1972 SC 1910, (1972) 1 SCC 849, 1972 3 SCR 991
Author: K Hegde
Bench: G Mitter, K Hegde, P J Reddy
JUDGMENT K.S. Hegde, J.

1. Though this appeal relates to a comparatively small matter, it has exposed several disturbing features. Hence it is necessary to set out the facts of the case in some detail.

2. The appellant is a tenant of the respondent. She is occupying one of the premises belonging to the respondent. The respondent is seeking to evict her from the said premises. For that purpose she applied to the District Magistrate, Dehradun, who is also the Rent Controller, under Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (to the hereinafter referred to as the Act) for permission to sue the appellant for her eviction. The permission asked for was granted by the Rent Controller. As against that order, the appellant went up in revision to the Commissioner, Meerut Division, Meerut who affirmed the order of the District Magistrate. Thereafter the appellant went up in revision to the State Government. During the pendency of that proceeding the State Government passed an order of stay which reads:

Operation of the permission under Section 3 of the Act granted by the Commissioner, Meerut Division, Meerut to the opposite party, landlady to file the suit for the petitioner's ejectment from the house in question is stayed pending consideration of the case by the State Government.

3. Later the State Government allowed the revision petition and set aside the permission granted. The respondent challenged the legality of the order made by the State Government before the High Court of Allahabad in a petition under Article 226 of the Constitution. The High Court set aside the order of the Government on the ground that the State Government in deciding the revision petition had allowed itself to be influenced by irrelevant considerations. The concluding portion of the order of the High Court reads:

4. This order was passed on February 28, 1967. On the very next day, the respondent filed a suit for eviction of the appellant. When the revision petition came up for hearing before the State Government,that it was not competent to hear the revision petition in view of the institution of the suit and for that purpose, it relied on a decision of the High Court holding that a revision petition pending before the State Government becomes infructuous once a suit for eviction is filed in pursuance of the permission given by the Commissioner. The State Government accepted that contention and dismissed the revision petition on the sole ground that the proceeding before it became infructuous in view of the institution of the civil suit. The appellant challenged that order by means of a writ petition before the Allahabad High Court. The High Court came to the conclusion that the stay granted by the State Government had lapsed when the revision petition was disposed of and the same did not stand revived when the High Court directed the State Government to rehear the matter and dispose of the same according to law. Consequently, on the institution of the civil suit for eviction of the appellant, her revision petition before the State Government became infructuous.

As against that order, this appeal has been brought by special leave.

5. Before proceeding to discuss the points arising for decision, it will be convenient to read the relevant provisions of the Act.

6. Though the Act purports to be a temporary measure, it has continued to be in force from 1947. This is but a small anomaly compared with the difficulties created by some of its, provisions. Now let us have a look at those provisions. They read:

Restrictions on eviction.

(1) Subject to any order passed under Sub-section 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) that the tenant is in arrears or rent for more than three months and has failed to pay the same to the landlord within one month of the service upon him of notice of demand;

(b) that the tenant has, wilfully caused or permitted to be caused substantial damage to the accommodation;

(c) that the tenant has, without the permission in writing of the landlord, made or permitted to be made any such construction as, in the opinion of the Court, has materially altered the accommodation or is likely substantially to diminish its value;

(d) that the tenant has created a nuisance or has done any Act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation, or which is likely to affect adversely and substantially the landlord's interest therein;

(e) that the tenant has on or after the 1st day of October, 1946, sub-let the whole or any portion of the accommodation without the permission of the landlord;

(f) that the tenant has renounced this character as such or denied the title of the landlord and the latter has not waived his right or condoned the conduct of the tenant;

(g) that the tenant was, allowed to occupy the accommodation as a part of his contract of employment under the landlord and his employment has been determined.

Explanation.- For the purposes of Sub-section(e) lodging a person in a hotel or a lodging house shall not be deemed to be subletting.

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 patty 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 Sub-Section (3) shall, subject to any order passed by the State Government under Section 7-F be final.

7. The only other relevant Section for our present purpose is Section 7-F which says:

Power of State Government.-The 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 7A and may make such order as appears to it necessary for the ends of justice.

8. Providing against unlawful eviction is undoubtedly a laudable object. It is necessary in social interest that improper eviction of tenants should be prohibited. Various States have enacted laws prohibiting the landlords from evicting their tenants except on grounds mentioned in those laws. The implementation of those measures is left in the hands of either regular courts or regularly constituted tribunals who are the principal repositories of the judicial power of the State and not with execuive authorities burdened with other duties. But strangely enough under the Act two rounds of litigations are provided for. A landlord seeking to evict a tenant must first go to the District Magistrate for permission. As against the order of the District Magistrate the aggrieved party can go up in revision to the Commissioner. The order of the Commissioner, subject to any order passed by the State Government under Section 7-F of the Act, is final. Section 7-F empowers the State Government to revise the order of the order of the Commissioner at any time it pleases. There is no time limit for exercising that power. This entire long drawn out process is only for the purpose of deciding whether the permission should be granted to the landlord to sue his tenant for ejectment. If the permission sought is granted then starts another round of litigation from one court to another. The principal function of courts and tribunals is to settle the dispute between the parties and thereby give a quietus to the social frictions generated by the unresolved disputes. As long as a litigation lasts, the tension continues and useful energies will be wasted. This is not all. Every litigation means heavy financial burden to the parties. The merry-go-round of litigation provided by the Act instead of helping the tenants who ordinarily belong to the weaker Sections of the society is likely to result in their ruination. These problems are for the legislatures to consider.

9. The power conferred on the District Magistrate, the Commissioner and the State Government has been held to be a judicial power by this Court-see Shri Bhagwan and Anr. v. Ramachand and Anr. . Therefore let us see how that power is required to be exercised. Neither Section 3 nor Section 7-F prescribes under what circumstances the permission asked for should be granted and on what grounds the same can be refused. Prima facie the power conferred on the authorities under Section

3 and 7-F has no limits. It is neither controlled nor guided. The validity of that power cannot be and was not challenged in these proceedings. Hence we shall not go into it. If one desires to know how and to what extent the power conferred on the authorities under those provisions can be misused, one has only to look to the facts of this case.

10. The appellant filed the revision petition before the State Government on April 2, 1965. On the same day she sent a copy of that petition alongwith an application to the Minister for irrigation who had nothing to do with the revision petition in question as revision petitions under Section 7-F were being dealt with by the Ministry of Civil Supplies. It is reasonable to infer that she must have done so because either she or, some of her friends or relations had some influence with that Minister. Otherwise there was no purpose in sending a copy of the revision petition to the Irrigation Minister. The Irrigation Minister sent the copy received by him to the Secretary, Civil Supplies after making the following note thereon;

Pl. look into it. So much is in my knowledge that occupants are very old tenant of this shop. I hope...proper view will be taken of the dispute.

Thereafter some official in the Secretariat prepared a detailed note giving the history of the case. That office note concluded thus:

In this connection observations of Minister for Irrigation and Power on serial No. 12 and orders of J.S. at the bottom thereon may also please be seen, submitted K.B. may please see for orders.

In due course the Government allowed the revision petition. That order has its own special features. It reads:

Government of Uttar Pradesh Rent Control Department No. 1696/E-1(10)/1965.

Dated Lucknow, June 14, 1966.

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regarding a portion of premises No. 11 Rampur Mandi Road, Dehra Dun.

With reference to her petition dated April 2, 1965.

Smt. Prabhawati is informed that after a careful examination of the records of the case and consideration of the version of the opposite party and also in view of other facts relevant to the case, it appears expedient in the ends of justice that the petitioner should not be dispossessed from the disputed premises.

Therefore, in exercise of the powers conferred under Section 7-F of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, the Governor is pleased to revoke the permission under Section 3 of the said Act granted by the Rent Control and Eviction Officer Dehra Dun and confirmed by the

Commissioner, Meerut Division, Meerut, vide his orders dated March 30, 1965, passed in revision No. 13, to file a civil suit of ejectment against the petitioner from the premises in dispute.

Sd - B. N. Chaturvedi Anu Sachiv.

11. One would search this order in vain for the reason that persuaded the State Government to allow the revision petition. Not a single reason is given for setting aside the order of the Commissioner. But if one delves into the records of the Government as the High Court of Allahabad did, one is left with a feeling that the note of the Irrigation Minister must have weighed heavily on the concerned authority. Our experience in dealing with litigations of this type does not embolden us to say that what happened in this case is a rare exception to the rule.

12. It may also be noted that when the revision petition was pending before the State Government, some busy body by name Ramesh Puri wrote a letter to the Minister for Food and Civil Supply on May 16, 1966 recommending the case of the appellant. In his letter he set forth his qualifications as a "social worker and a fighter for freedom since childhood". That letter appears to have found a respectable place in the records of the case. One can only regret for this sorry state of affairs.

13. The appellant has found a match in the respondent. It is interesting to note how the respondent cleverly queered the pitch against the appellant. We have earlier noticed that it was at her instance the High Court had quashed the order of the State Government and directed the State Government to rehear and dispose of the revision petition according to law. Soon after getting that order, she tried to over-reach that order by filing a suit for eviction the very next day after the High Court passed its order. The High Court of Allahabad as well as this Court have held that a suit validly instituted after obtaining the required permission under Section 3(1) does not cease to be maintainable because of any order made by the State Government under Section 7-F during the pendency of the suit-see Bhagwan Das v. Paras Nath and Mohammad Ismail v. Nanney Lal . In a rather desperate bid to take some advantage from those decisions, the respondent appears to have rushed to the Civil Court even before the ink on the High Court's order had dried up. Having instituted the suit she presented to Government what according to her was a fait accompli. The State Government as mentioned earlier felt that the revision petition before it became infructuous because of the institution of the suit. Unfortunately the High Court concurred with that view.

14. Mr. Tarkunde, learned Counsel for the appellant contended before us that no sooner the High Court set aside the order of the Government and directed the State Government to rehear and dispose of the matter according to law, the interim order of stay passed by the State Government stood revived. In support of that contention of his, he has placed reliance on the decision of the Patna High Court in Bankim Chandra and Ors. v. Chandi Prasad ; the decisions of the Madras High Court in Tavvale Veeraswami v. Pulim Ramanna and Ors. I.L.R. 58, Mad. 721 and Saranathat Aiyangar v. Muthiah Mooppanar and Ors. 65, M.L.J. 844 and the decision of the Calcutta, High Court in Sushila Bali Dasi v. Guest Keen Williams Ltd. I.L.R. (1949) Vol. 1 Cal. 177. We do not think it is necessary to consider that contention in this appeal The principle of law contended for by Mr. Tarkunde, has several facets; but there is no need to go into those facets in this appeal. In our opinion this appeal has to succeed on a much broader ground. No party to a litigation can be

permitted to frustrate the decision rendered by having recourse to trickery. The true effect of the order made by the High Court in the writ petition was that the question whether the respondent should be permitted to tile a suit for ejectment of the appellant or not must be gone into and decided afresh by the State Government. One of the implications flowing from that order is that the respondent is precluded from filing the intended suit for eviction till the State Government decides the revision petition. Otherwise the direction given by the High Court would remain unobeyed. The respondent cannot be permitted to obstruct the implementation of that direction and that to a direction given at her instance. Consequently it was not open to the respondent to file the suit before the revision petition was disposed of by the State Government. In our opinion, the suit filed by the respondent was a premature one. Such a suit does not bar the State Government from disposing of the revision petition in pursuance of the order made by the High Court. The State Government was not justified in dismissing the revision petition as being infructuous.

15. In the result this appeal is allowed, the order of the High Court dismissing the writ petition as well as the order of the State Government dismissing the revision petition are set aside. Further the State Government is directed to restore the said revision and dispose of the same according to law. This, has been a long drawn out litigation. Hence it is necessary for us to direct the State Government to dispose of the revision petition within four months from the date of the receipt of this order. Meanwhile it is open to the respondent to move the court in which she has filed the civil suit to stay further proceedings. In the circumstances of the case, we direct the parties to bear their own costs both in the High Court as well as in this Court.