Supreme Court of India
Mohammad Swalleh & Ors. V vs Iiird Addl. District Judge, ... on 4 November, 1987
Equivalent citations: 1988 AIR 94, 1988 SCR (1) 840
Author: S Mukharji
Bench: Mukharji, Sabyasachi (J)

PETITIONER:
MOHAMMAD SWALLEH & ORS. v.

Vs.

RESPONDENT:
IIIRD ADDL. DISTRICT JUDGE, MEERUT & ANR.

DATE OF JUDGMENT04/11/1987

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
OZA, G.L. (J)

CITATION:
1988 AIR 94 1988 SCR (1) 840
1988 SCC (1) 40 JT 1987 (4) 291
1987 SCALE (2)971

ACT:
U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972;s. 43(2)(rr) U.P. (Temporary) Control of Rent and Eviction Act, 1947: s. 3-Permission for eviction granted under s. 3 of the old Act becoming final-First suit dismissed on technical ground Application for eviction filed under s. 43(2)(rr) of the new Act-Whether maintainable.

Constitution of India, Arts. 226 & 136: Absence of provision in Statute for appeal-Erroneous order of Prescribed Authority set aside by District Judge-Jurisdiction of Court to interfere with.

HEADNOTE:
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Sub-section (1) of s. 3 of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 barred suits without the permission of the District Magistrate against tenants for eviction except on the grounds mentioned therein. Sub-section (2) provided for revision to the Commissioner, and sub-section (4) made the order of the Commissioner final. Section 7-F empowered the State Government to interfere with such orders. That Act was repealed by the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act,

1972.

Section 43(2)(rr) of the new Act, inserted therein by U.P. Act 37 of 1972, provided that where any permission obtained under s. 3 of the old Act had become final either before the commencement of the Act or in accordance with the provisions of the sub-section after the commencement of the Act, the landlord may apply to the Prescribed Authority for tenant's eviction. This section was against amended in 1976 by insertion of the words "whether or not a suit for the eviction of the tenant has been instituted", and giving it retrospective operation. The order of the Prescribed Authority in such cases was made final.

The landlord's application under s. 3 of the 1947 Act for eviction 'of the tenants-appellants was granted by the Commissioner in April, 197I. The revision preferred by them was rejected by the State Government in February, 1972 and the permission became final. In pursuance

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Of the said permission the landlord filed a suit for eviction of the appellants. Thereafter in 1973 he filed an application for withdrawal of the said suit on the ground that as the 1972 Act had been amended, he would file an application for enforcement of the permission.

The Court of Small Causes found that as the cause of action on which the suit had been filed was rendered infructuous, the suit was liable to be dismissed. The application filed by the landlord under s. 43(2)(rr) of the new Act for eviction of the appellants, was rejected by the Prescribed Authority on the ground that since permission obtained under s. 3 of the old Act had been exhausted, the application was not maintainable. An appeal against that order was allowed by the District Judge.

In the writ petition filed by the appellants-tenants under Art. 226 of the Constitution it was contended that the permission obtained by the landlord having been utilised by filing the suit, another proceeding on the basis of the said permission could not be initiated, and that no appeal lay from the decision of the Prescribed Authority to the District Judge. The High Court held that the landlord had right to file the second application. It took the view that dismissal of the first action taken by the landlord after obtaining permission under the old Act did not preclude him from taking the second action under s. 43(2)(rr) of the Act. It further held that since the first suit was not decided on merits subsequent action was not precluded.

Dismissing the appeal by special leave,

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HELD: 1. Section 43(2)(rr) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 as it stood in 1973, permitted a landlord to file an application for the enforcement of the permission obtained by him under s. 3 of the 1947 Act. After the aforesaid provision was amended in 1976, the landlord was not required to file a

suit to avail of the permission. The amendment was retrospective in operation. [844G-H]

2. The Prescribed Authority was in error in taking the view that as the previous suit had been filed by the landlord on the basis of permission and the same had been dismissed, the application under s. 43(2)(rr) of the 1972 Act was not maintainable. Such a view would frustrate the very purpose of the express provision of the section which conferred a right on a landlord who had obtained permission under the old Act and has filed an application under the new provision, to get the
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tenant evicted. More so, when the permission granted had not been exhausted because the suit was dismissed on a technical plea and not on the merit of the contentions. [846C-D; 845C]

Pahlad Das v. Ganga Saran and Another , AIR 1958 Allahabad 774, approved.

3.1 Finality of order in judicial proceeding is one of the essential principles which the scheme of the administration of justice must strive for. [846D]

D.K. Soni v. P.K. Mukherjee & Ors. C.A. No . 6626 of 1983 decided on October 27, 1987. referred to.

3.2 In the instant case, through no appeal lay before the District Judge, the High Court came to the conclusion that the order of the Prescribed Authority was invalid and improper. On that ground it declined to interfere with the order of the District Judge in exercise of its jurisdiction under Art. 226 of the Constitution. Since justice has been done by setting aside the improper order of the Prescribed Authority, no exception can be taken to the order of the High Court. There is, therefore, no scope for interference under Art. 136 of the Constitution. [847A-B]

1 Shri Bhagwan and Anr. v. Ram Chand and Anr., [1965] 3 SCR 218, inapplicable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2 107 of 1979.

From the Judgment and order dated 22.9. 1978 of the Allahabad High Court in C.M.W. No. 3857 of 1978.

Gobinda Mukhoty, Ali Ahmad, Mrs. Jayshree Ahmad, Tanveer Ahmad, S S Hussain for the appellants.

R.K. Garg and D.K. Garg for the Respondents. The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. This is a tenant's appeal by special leave. After perusing the judgment impugned and grounds urged, we are of the opinion, that there is no substance in this appeal On merit, though there are one or two technical breaches. This is certainly not a decision which should

be interfered with in the exercise of jurisdiction under Article 136 of the Constitution by this Court. The appeal arises from the judgment and order dated 22nd September, 1978 of the High Court of Allahabad The respondent No. 2 herein, Smt. Murtaza Begum filed an application under section 3 of the U.P Temporary) Control of Rent and Eviction Act, 1947 being U.P. Act No. 3 of 1947, hereinafter called the old Act, against the appellants Section 3 of the said Act provides that subject to any order passed under sub-section (3) of that section, no suit shall, without the permission of the District Magistrate be filed in any court against any tenant for his eviction from any accommodation except on the grounds mentioned therein. Sub-section (2) of section 3 provided for revision to the Commissioner against the order of the District Magistrate Subsection (3) of section 3 empowered the Commissioner to hear the application and if he was not satisfied as to the correctness, legality or propriety of the order passed by the District Magistrate or as to regularity of proceedings held before him, alter or reverse his order or make such other order as might be just and proper. By sub-section (4) of section 3 the order of the Commissioner has been made final subject to any other order passed by the State Government under section 7 of the said Act. Section 7-F of the said Act empowered the State Government to call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to and authorised him to make such order as appeared to it necessary for the ends of justice. The application for eviction was granted by the Commissioner in this case on the 17th April, 1971. The appellants went in revision to the State Government. The revision was, however, rejected by the State Government on 7th February, 1972 The permission thereafter became final.

In pursuance of the aforesaid permission the respondent-landlord filed a suit being suit No 464 of 1972 in the court of Judge, Small Causes, Meerut for eviction of the appellants Thereafter in 1973 the landlord filed an application for withdrawal of the suit on the ground that as U P Urban Buildings (Regulation of Letting Rent and Eviction) Act of 972 being U P Act no 3 of 972. hereinafter called the New Act, had been amended, he would file an application for the enforcement of the permission obtained under section 3 of the old Act. On that application the court found that as the cause of action on which the suit had been filed was rendered infructuous, the suit was liable to be dismissed. After the suit was dismissed, the landlord being respondent no 2 herein filed an application under section 43(2)(rr) of the New Act for eviction of the appellants from the premises in question. It was resisted on the ground that the permission had been dismissed and the application under section 43(2)(rr) was not maintainable. The Prescribed Authority upheld the said objection of the appellants and rejected the application filed by the landlord on the ground that since permission obtained by the landlord under section 3 of the U.P. Act has been exhausted, the application filed by the landlord was not maintainable. It appears to us that the Prescribed Authority was clearly in error in so holding because the permission granted had not been exhausted because the suit as dismissed on a technical plea and not on the merit of the contentions Reference may be made to the observations in the decision of the Allahabad High Court in the case of Pahlad Das v. Ganga Saran and Another, AIR 1958 Allahabad 774, where the division bench of that court held that the obvious purpose of the permission under section 3 of the old Act was to enable the plaintiff, the landlord to evict the tenant from the premises and as long as that purpose was not fulfilled, the permission could not obviously exhaust itself Where it was not shown that the permission was granted to file a single suit or that it had been specified in it that a second suit could not be filed, the permission could not exhaust itself simply because the first suit filed on its basis was dismissed on some technical ground and the

permission obtained could be availed of for filing the second suit. In that view, the High Court affirmed the previous decision of that court.

It appears, however, that an appeal was filed against the order of the Prescribed Authority and the appeal was allowed by the order of the District Judge dated 28th April, 1978. Aggrieved thereby the tenants filed a writ petition before the High Court. The controversy in the High Court was whether the application filed by the landlord under section 43(2)(rr) of the New Act was not maintainable. The basis of the claim of the tenant was that as the permission had been utilised by filing the suit, another proceeding on the basis of the said permission could not be initiated The High Court noted that section 43(2)(rr) was added by U.P. Act no. 37 of 1972. By the addition of the new provision, the legislature conferred a right on a landlord who had obtained permission under the old Act and had filed an application under new provision to get the tenant evicted. Section 43(2)(rr) of the New Act was again amended by the U.P. Act No. 28 of 1976. By that amendment the words "whether or not a suit for the eviction of the tenant has been instituted" were inserted. The amending Act laid down that the amendment in the provision shall be deemed to have always been substituted. In other words, the amendment caused amendment to be retrospective in operation.

It is, therefore, apparent as the High Court in our opinion in the judgment under appeal rightly held that section 43(2)(rr) i.e. in 1973 permitted the landlord to file an application for the enforcement of the permission obtained by him. After the aforesaid provision was amended, the landlord was not required to file a suit to avail of the permission. The High Court in the judgment under appeal rejected the contention that once an application for permission had been filed, the second application would not lie. The High Court held that where the first suit was not decided on merits subsequent action was not precluded. The High Court noted that merits of the case were not examined by the Court. The Court in this appeal on this occasion did not find that the permission obtained by the landlord was invalid or illegal. The judgment of dismissal was thus on technical ground and not on merits. The High Court held that the landlord had right to file the second application. In our opinion, the High Court was right for the reasons mentioned hereinbefore.

It is next contended that since the suit was dismissed on the ground that the cause of action did not survive to the landlord, it should be held that the landlord had no right left to file an application under section 43(2)(rr). This was, in our opinion, rightly rejected by the High Court. The High Court negatived the contention of the tenant that dismissal of the first action taken by the landlord after obtaining permission under the old Act precluded the landlord from taking the second action under section 43(2)(rr) of the Act.

We are of the opinion that the High Court was right. It will be appropriate at this stage to refer to the provisions of section 43(2)(rr) or the New Act which are as follows:

> "Where any permission referred to in Section 3 of the old Act has been obtained on any ground specified in subsection (1) or sub-section (2) of Section 21, and has become final, either before the commencement of this Act, or in accordance with the provisions of this sub-section, after the commencement of this Act, (whether or not a suit for the eviction of the tenant has been instituted), the landlord may apply to the

> prescribed authority for his eviction under Section 21, and thereupon the prescribed authority shall order the eviction of the tenant from the building under tenancy, and it shall not be necessary for the prescribed authority to satisfy itself afresh as to the existence of any ground as aforesaid, and such order shall be final and shall not be open to appeal under Section 22: Provided that no application under this clause. shall be maintainable on the basis of a permission granted under Section 3 of the old Act, where such permission became final more than three years before the commencement of the Act:
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> Provided further that in computing the period of three years, the time during which the applicant has been prosecuting with due diligence any civil proceeding whether in a court of first instance or appeal or revision shall be excluded.

In view of the aforesaid, we are of the opinion that the Prescribed Authority was clearly in error in upholding the objection of the tenant that as the previous suit had been filed by the tenant on the basis of permission and the same had been dismissed, the application under section 43(2)(rr) of the Act 13 of 1972, was not maintainable. It was clearly erroneous contention. It would frustrate the very purpose of the express provision of section 43(2)(rr). Finality of order in judicial proceeding is one of the essential principles which the scheme of the administration of justice, must strive for. See in this connection the observations of D.K Soni v. P.K. Mukherjee & Ors., (Civil Appeal No. 6626/83 Judgment dated 27. 10. 1987).

It was contended before the High Court that no appeal lay from the decision of the Prescribed Authority to the District Judge. The High Court accepted this contention. The High Court finally held that though no appeal lay before the District Judge, the order of the Prescribed Authority was invalid and was rightly set aside by the District Judge. On that ground the High Court declined to interfere with the order of the learned District Judge. It is true that there has been some technical breach because if there is no appeal maintainable before the learned District Judge, in the appeal before the learned District Judge, the order of the Prescribed Authority could not be set aside. But the High Court was exercising its jurisdiction under Article 226 of the Constitution. The High Court had come to the conclusion that the order of the Prescribed Authority was invalid and improper. The High Court itself could have set it aside. Therefore in the facts and circumstances of the case justice has been done though, as mentioned hereinbefore, technically the appellant had a point that the order of the District Judge was illegal and improper. If we reiterate the order of the High Court as it is setting aside the order of the Prescribed Authority in exercise of the jurisdiction under Article 226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the Prescribed Authority has been set aside, on objection can be taken.

In the premises there is no scope for interference under Article 136 of the Constitution. Our attention was drawn to certain observations of this Court about the power of the State Government under section 7-F of the old Act in Shri Bhagwan and Anr. v. Ram Chand and Anr., [1965] 3 SCR

218. In the view, we have taken of the facts of this case, it is not necessary to deal with this decision in any detail.

In the aforesaid view of the matter, this appeal must fail and is accordingly dismissed. In the facts and circumstances of the case, we however, make no order as to costs.

P.S.S. Appeal dismissed.