

State of U.P. and anr. Vs. Kunwar Trivikram Narain Singh and anr.

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Court : Allahabad

Decided On : Jul-08-1977

Reported in : AIR1977All419

Judge : M.N. Shukla and ;N.D. Ojha, JJ.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting Rent and Eviction) (Amendment) Act, 1974 - Sections 3 and 31

Appeal No. : Civil Misc. Writ No. 12995 of 1975

Appellant : State of U.P. and anr.

Respondent : Kunwar Trivikram Narain Singh and anr.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : S.N. Upadhyaya, Adv.

Disposition : Petition dismissed

Judgement :

N.D. Ojha, J.

1. The respondent No. 1 Kunwar Trivikram Narain Singh is the landlord of a building situate in the district of Jaunpur which according to him was occupied by the District Magistrate/Collectorate Jaunpur, as tenant. The landlord made an

application under Section 21 of the U. P. Urban Buildings (Regulation of Letting Rent and Eviction) Act 1972, (Act No. 13 of 1972) against the petitioners for release of the accommodation in his favour. This application was made on 27-13-1972 before Sri Radhey Shyam Srivastava who was the Pre-scribed Authority. The application remained pending before Sri Srivastava till 10-8-1974 when he was transferred, It appears that there was no Prescribed Authority appointed thereafter till 2-9-1974 when as stated in Paragraph 9 of the writ petition 'the work of Prescribed Authority under the Rent Control Act' was assigned by the District Magistrate to Sri Harihar Prasad Srivastava. The U. P. Act No. 13 of 1972 was amended by the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act 1974 which came into force on 1-9-1974. The definition of 'Prescribed Authority' was substituted by Section 2 of the amending Act. Under the substituted definition the 'Prescribed Authority' means an officer having not less than three years experience as Munsif or as Magistrate of the first class or as Executive Magistrate authorised by general or special order of the State Government to exercise, perform and discharge all or any of the powers, functions, and duties of the prescribed authority under this Act, and different officers may be so authorised in respect of different areas or cases, or classes of cases. After the commencement of the amending Act some time late in September, 1974 the case was transferred to the Court of Munsif Magistrate First Class/Prescribed Authority Jaunpur, respondent No. 2. Before the Munsif Magistrate a preliminary objection was raised on behalf of the petitioners asserting that he had no jurisdiction to try the case. It was urged before him that in view of Section 3 of the amending Act which contained transitory provisions the case had to be decided by the Prescribed Authority appointed under the old Act. This plea was repelled by the Munsif Magistrate by his order dated 7-6-1975. Aggrieved by that order the petitioners have instituted this writ petition with a prayer for quashing that order.

2. We have heard learned counsel for the parties. We are of the opinion that there is no substance in the writ petition. It was urged on behalf of the petitioners that in view of Section 3 of the amending Act which contained the transitory provisions the case had to be decided either by the Prescribed Authority namely Sri Harihar Prasad Srivastava to whom the case was transferred or by the District Magistrate

before whom the case remained pending on 1-9-1974. In order to judge the correctness or otherwise of the submission made by the learned counsel for the petitioners it would be useful to reproduce Clause (a) of Section 3 of the amending Act on which alone reliances has been placed by the learned counsel for the petitioners. It reads as under:

'(3) Transitory provisions.-- Notwithstanding the amendment of the Principal Act by this Act.

(a) Every case instituted before or transferred to the prescribed authority as defined in the Principal Act (as it stood before the commencement of this Act:) or recalled from such authority by the District Magistrate at any time before April, 1, 1974 and pending at the commencement of this Act before such authority or District Magistrate shall continue to be heard and decided by such authority or District Magistrate, as the case may be.'

3. A perusal of Clause (a) leaves no manner of doubt that the crux of the matter for deciding the jurisdiction with regard to cases instituted before or transferred to the Prescribed Authority as defined in the principal Act at any time before April 1, 1974 is as to whether the case on the commencement of the amending Act namely on 1-9-1974 was pending before the Prescribed Authority or consequent upon an order of recall by the District Magistrate pending before the District Magistrate. The use of the words 'as the case may be' in Clause (a) clearly indicates that the cases covered by this Clause have been divided into two categories (1) such cases which are pending before the Prescribed Authority on 1-9-1974 and (2) those cases which had been recalled by the District Magistrate to his own file from the file of the Prescribed Authority and were pending before the District Magistrate consequent upon the order of recall on 1-9-1974. From the pariation of facts given above it is apparent that on 1-9-1974 the present case was not pending before any prescribed Authority, From a perusal of the impugned order passed by the Munsif Magistrate it is apparent that the District Magistrate had never recalled the instant case to his own file from that of the Prescribed Authority and as such it cannot be said that the case was pending before the District Magistrate on 1-9-1974 consequent upon an order of recall. Both the conditions to attract Clause (a) of

Section 3 of the amending Act are, therefore, lacking in the instant case. In this view of the matter the case could be decided only by the Munsif Magistrate to whom it had been transferred some time late in September 1974. The Munsif Magistrate was right in taking the view that he had jurisdiction to take cognizance of the case.

4. In view of the foregoing discussion we find no merit in this writ petition. It is accordingly dismissed with costs. The ex parte order of stay dated 10-12-1975 and confirmed on 14-7-1976 is vacated.

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