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Court : Rajasthan

Decided On : Sep-09-1952

Reported in : AIR1953Raj77

Judge : Ranawat and; Dave, JJ.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 22(3) and 27(2); [Constitution of India](#) - Article 227

Appeal No. : C. Writ Application No. 18 of 1952

Appellant : Kedarnath

Respondent : Umedilal

Advocate for Def. : P.C. Bhandari, Adv.

Advocate for Pet/Ap. : Ram Avatar Gupta, Adv.

Judgement :

Ranawat, J.

1. This is an application of one Kedar Nath under Article 227, [Constitution of India](#). It is alleged that Umedilal filed an application under the Matsya Premises Rent Control Ordinance, 1943 (hereinafter to be referred to as the Matsya Ordinance) in the court of the Rent Controller for ejection of the petitioner from a shop which

he was occupying as a tenant. The grounds taken by Umedilal in his application were that the premises were required for the bona fide use of the landlord and that the tenant had not paid the rents for three months. On both the grounds Kedar Nath contested the petition.

2. The Rent Controller after holding an inquiry allowed the petition of Umedilal on the 16th of October 1951 and ordered Kedarnath to vacate the disputed shop within one month failing which it was laid down that he would be liable to be ejected in accordance with the provisions of the law. Kedarnath filed an appeal against the order of the Rent Controller in the Court of the District Judge, Bharatpur, on the 19th of October 1951 and the Dist. Judge on the 28th of February 1952 confirmed the order of the Rent Controller and dismissed the appeal. Kedar Nath has now come to this court against the judgment of the District Judge. His main contention is that no appeal lay to the Court of the District Judge against the order of the Rent Controller and, because the District Judge had no jurisdiction to decide an appeal against the order of the Rent Controller, his decision should be quashed and the appeal should be ordered to be returned to the appellant for presentation to the proper authority.

3. It is also urged that the Rent Controller had no jurisdiction of the premises and he went beyond the scope of his jurisdiction in making an order directing Kedar Nath to vacate the shop within one month. He should have simply confined to the determination of the liability of the tenant for eviction.

4. We have carefully considered the case put before us by both the parties. At the time, an application was filed by Umedilal in the Court of the Rent Controller the Matsya Ordinance was in force and his application was, therefore, made under that Ordinance, but before it could be disposed of the Matsya Ordinance was repealed on the 28th of November 1950 when in its place the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (XVII of 1950) (hereinafter to be referred to as the Rajasthan Act) was enacted. The petition of Umedilal which was decided by the Rent Controller after the Rajasthan Act came into force shall be deemed to have been decided under the provisions of Section 27 of the new Act. Section 27(2) of the Rajasthan Act is as follows :

' X X X X X (2) Except as is otherwise provided by or under this Act all cases which are, at the commencement thereof in any area to which it has been extended under Section 2, pending before a Controller or any other authority appointed by or under any law in force therein immediately before such commencement, shall, notwithstanding anything to the contrary in this Act, be determined and disposed of by such Controller or authority in accordance with such law.'

Under Section 22(3) of the Rajasthan Act it is provided that any person aggrieved by an order of the Rent Controller may within fifteen days from the date of such order appeal therefrom to such authority as the Government may from time to time appoint in that behalf. The Rajasthan Act was extended to the Bharatpur District with effect from 21st of December 1950 by Govt. Notification No. P. (24) G. A. (B) 50, dated the 21st December 1950 published in the Rajasthan Gazette dated the 23rd December 1950. By the same notification, the District Magistrate of Bharatpur was appointed the authority under Section 22(3) of the Rajasthan Act to hear appeals from the orders of the Rent Controller. As the decision of the Rent Controller in the present case was made under Section 27(2) an appeal against his order lay to the District Magistrate, Bharatpur, under Section 22(3) of the Rajasthan Act. Instead of filing an appeal in the court of the District Magistrate, Kedarnath filed an appeal in the court of the District Judge who was the appellate authority under the Matsya Ordinance.

As has already been stated above, the Matsya Ordinance was repealed on the 28th of November 1950 and consequent to the repeal of that Ordinance the jurisdiction of the District Judge as an appellate authority came to an end. The proceedings in the court of the District Judge, therefore, were clearly without jurisdiction. It is contended by Mr. Bhandari that because the application of Umedilal was made under the Matsya Ordinance that law would apply for the purposes of appeals as well. He takes the argument a little further and wants to stress that the forum of appeal would continue to be the same for purposes of appeals and orders of the Rent Controller made under the Matsya Ordinance. It may be noted that even though the petition of Umedilal had been filed under the Matsya Ordinance, it was decided by the Rent Controller under Section 27(2) of the Rajasthan Act.

The case was pending when the Rajasthan Act came into force and it had to be decided by the Rent Controller in the light of the provisions of Section 27(2) of the Rajasthan Act. The decision of the Rent Controller cannot be, regarded as a decision under the Matsya Ordinance. An appeal against the Rent Controller would, therefore, lie to the authority specified in Section 22(3) of the Rajasthan Act. The jurisdiction of the District Judge as an appellate authority under the Matsya Ordinance ceased from the date the Matsya Ordinance was repealed. As regards the pending cases, the District Judge was given jurisdiction under Section 27 of the Rajasthan Act. This case was pending in the court of the Rent Controller at the time the Rajasthan Act came into force and it cannot be regarded that this case was pending in the court of the District Judge.

It is, therefore, evident that the District Judge had no jurisdiction whatsoever to decide an appeal against the order of the Rent Controller passed under Section 27 of the Rajasthan Act. Because the District Judge exercised jurisdiction which was not vested in him and acted beyond the scope of his authority in dealing with this appeal, it would be proper for this court to set aside the order of the District Judge in exercise of the powers of superintendence of this court under Article 227 of the [Constitution of India](#). Mr. Ram Avtar has also pressed his second point that the Rent Controller had no jurisdiction to make an order directing his client to vacate the premises and that he should have simply determined the liability of the tenant to eviction. We need not decide this question in the present case, as the matter can be agitated by the petitioner in appeal.

5. We, therefore, accept the petition and set aside the order of the District Judge which he has passed on the 28th of February 1952 and we would direct the District Judge to return the petition of appeal to the appellant for presentation to the proper court.

6. As the petitioner was himself to blame for filing an appeal in the court of District Judge, we think he should bear the costs of this petition himself. There would therefore be no order as to costs.