

**(1951) 04 AHC CK 0005**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Second Appeal No. 39 of 1951

C.D. Hans

APPELLANT

Vs

Shri Munnu Lal

RESPONDENT

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**Date of Decision:** April 16, 1951

**Acts Referred:**

- Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Section 16, 3

**Citation:** AIR 1952 All 432 : (1951) 21 AWR 481

**Hon'ble Judges:** Misra, J

**Bench:** Single Bench

**Advocate:** Farooq Hasan, for the Appellant; B.K. Dhaon and K.N. Tandon, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Misra, J.

This appeal arises out of a suit for ejectment from a house in Sundarbagh, Lucknow and for recovery of rent.

2. The defendant-appellant, C. D. Hana was in occupation of the premises at a monthly rent Rs. 37/8/0. The plaintiff, Munnu Lal purchased the house on 4th June 1948 and shortly thereafter he applied to and secured on 28th December 1948 from the Rent Control and Eviction Officer, Lucknow an order permitting him to institute three months after the date thereof proceedings for ejectment against the defendant if the latter did not exchange the house for another house of the plaintiff of approximately the same rental value in Chowk. The sanction did not mature as it was rescinded by the Eviction Officer on 12th February, 1949 and it is suggested that this action was inspired by an order passed on 15th January 1949 by the District Magistrate, Lucknow who was moved by the tenant to reconsider the matter. Notwithstanding, however, the withdrawal order Munnu Lal gave, on 8th March 1949 a notice to Hans to quit and sued him on 24th April 1949 for ejectment and

recovery of Rs. 37/8/0 as arrears of rent for the period 4th March 1949 to 3rd April 1949. He urged that the second order of the Eviction Officer was ultra vires.

3. The Courts below upheld his contention and ordered eviction on the basis of the sanction dated 28th December 1948. The view taken by them was that permission once given could not be withdrawn and in any event the order of the Rent Control and Eviction Officer was virtually not his order but that of the District Magistrate.

4. In second appeal on behalf of Hans, a number of contentions have been urged. It is claimed: (1) That the initial sanction was invalid because in the first place the landlord did not genuinely require the accommodation for his own use and further because the order was a conditional one, and (2) That the permission lost its force by reason of the withdrawal order dated 12th February 1949.

5. A perusal of the U. P. (Temporary) Control of Rent and Eviction Act (III of 1947) would show that the power to accord sanction for evicting a tenant has not been expressly given by any of the provisions of the Act. The legislature has apparently adopted the unusual method of conferring that power by merely mentioning in S. 3 that

"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....."

It is conceded, however, on all hands that on a true construction of the section, such power must be deemed to exist. One of the first principles of law with regard to the effect of an enabling Act is that if the Legislature enables something to be done, it gives power at the same time, by necessary implication, to do everything which is indispensable for giving effect to that power for the purpose of carrying out the purpose in view. Again on general principles, if not on the basis of S. 21 General Clauses Act, the authority empowered to grant sanction for the commencement of a suit under S. 3 of the Act must be deemed to have also the power to revoke that sanction in suitable cases. By S. 16 of the Act, orders passed under the Act are not liable to be questioned in a Court of law. But apart from the prohibition contained in that section, it has to be further remarked that the Rent Control and Eviction Officer in either granting sanction or revoking it does not act in a judicial or a quasi-judicial capacity. It would thus be fruitless to proceed to discover whether the order of withdrawal emanated from the Eviction Officer himself, in the sense that it was passed on his own initiative or was brought about on inspiration derived from the District Magistrate's order dated 15 January 1949. It is sufficient that it was passed over the signatures of the same officer who had given the original sanction on 28th December 1948.

6. I am clear in my mind that the sanction of the Rent Control and Eviction Officer dated 28th December 1948, was ineffective after 12th February 1949, and it could not be availed of for the purpose of institution of the suit which gives rise to this appeal.

7. In the view that I take of the case, it appears wholly unnecessary even if it were possible to do so inspite of S. 16 of the Act to enter into the further question whether the initial sanction was or was not valid.

8. I allow the appeal, set aside the order of the Courts below and dismiss the plaintiff's suit with costs here and heretofore.