
The Central Talkies Ltd., Kanpur Vs Dwarka Prasad

Appeal (civil) 374 of 1957

Court: Supreme Court of India

Date of Decision: Jan. 16, 1961

Acts Referred:

Constitution of India, 1950 " Article 133(1)#Criminal Procedure Code, 1898 (CrPC) " Section 1(2), 10, 10(2)#United Provinces (Temporary Control of Rent and Eviction) Act, 1947 " Section 3

Citation: AIR 1961 SC 606 : (1961) CriLJ 740 : (1961) 3 SCR 495

Hon'ble Judges: M. Hidayatullah, J; J. L. Kapur, J; J. C. Shah, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Hidayatullah, J.

This is an appeal against the judgment and decree of the High Court of Allahabad with a certificate granted by the High

Court under Art. 133(1)(b) of the Constitution. The High Court, reversing the decision of the trial Court, decreed the present suit for ejection

against the appellants, and also awarded damages to the plaintiff-respondent at the rate of Rs. 593-12-0 per month. The suit was filed by the

respondent, Babu Dwarka Prasad, against the appellants, Central Talkies Ltd., Kanpur, and Lala Ram Narain Garg, the Managing Director of the

Company.

2. The facts, briefly stated, are as follows : Dwarka Prasad was the sole owner of a plot of land No. 73/22 (old No. 73/28) situated in

Collectorgunj, Kanpur. In 1933 an agreement of lease was executed by five persons in favour of Lala Rameshwardas, the predecessor-in-title of

Babu Dwarka Prasad, by which the five lessees took over on lease a hall and other constructions, which the lessor agreed to build at a cost of Rs.

16,000/-, within four months. It was agreed that, if the lessor was required to spend an amount in excess of Rs. 16,000/-, he would be entitled to

interest at the rate of 12 annas per cent. per month from the second party till the end of tenancy. The tenancy was from month to month, and the

period of the tenancy was fixed at 5 years in the first instance. This tenancy continued with variations in the amount of rent till the year 1946, and

on January 15, 1946, Dwarka Prasad sent a letter to the defendants that the period of lease was to expire on February 28, 1946, and that the

Central Talkies Ltd. should vacate the premises by that date. The defendants did not vacate the premises, and a suit for ejectment was filed against

the Central Talkies Ltd.

3. During the pendency of that suit, the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 (referred to in the judgment as the

Eviction Act), came into force. Under s. 3 of the Eviction Act, permission of the District Magistrate was required to file in any Civil Court a suit for

the eviction of a tenant, except on grounds which were enumerated in the section. Admittedly, that suit was filed on a ground which was not

enumerated in the section, and Dwarka Prasad withdrew it. He then applied to the District Magistrate for permission to eject the Central Talkies

Ltd., from the premises, and permission was granted by the Additional District Magistrate (Rural Area) on July 7, 1948. It is not necessary to state

the pleas which were taken by the defendants in the newly filed suit, because the only point argued before us was that the suit was incompetent,

because permission of the District Magistrate as required by s. 3 had not been obtained.

4. The Divisional Bench of the High Court held that the suit was competent. The two learned Judges, who heard the appeal, reached the same

conclusion, though on slightly different grounds. Raghubar Dayal, J. held that the Additional District Magistrate, who granted permission, was

empowered by the Provincial Government under s. 10(2) of the Code of Criminal Procedure to exercise all the powers of a District Magistrate

under the Code and all the laws for the time being in force, and the requirements of s. 3 were complied with. Brij Mohan Lal, J. came to the

conclusion that the District Magistrate by transferring the case to the Additional District Magistrate (Rural Area) had authorised him to perform his

functions under the Act in this behalf and that the Additional District Magistrate, being thus included in the definition of "District Magistrate" under

s. 2(d), was competent to grant the permission. Concurring, therefore, that the suit was instituted with the permission of the District Magistrate as

required by the Eviction Act, the Divisional Bench held that the suit was competent.

5. It may be pointed out that, at first, the application for permission was made over by the District Magistrate to Mr. Hadi Hasan, who was also an

Additional District Magistrate; but the latter sent the case back to the District Magistrate asking for a transfer, because he had been approached on

behalf of the defendants. The District Magistrate thereafter passed an order on February 11, 1948, to the following effect :

Transferred to Additional District Magistrate (R.A.) for disposal.

6. The application for permission was disposed of by Mr. Brijpal Singh Seth, Additional District Magistrate (Rural Area), on July 7, 1948. This

Officer, who was previously a City Magistrate, Kanpur, was appointed an Additional District Magistrate by Notification No. 3400/II-276-48

dated May 22, 1948. The material portion of this Notification read as follows :

With effect from the date on which he takes over charge Shri Brijpal Singh Seth, City Magistrate, Kanpur, is appointed vice Shri Sheo Ramdas

Saksena -

(a) under sub-section (2) of section 10 of the Code of Criminal Procedure, 1898 (Act V of 1898), to be an Additional District Magistrate of

Kanpur District, with jurisdiction extending over the whole of the said district and with all the powers of a District Magistrate under the said Code

and under any other law for the time being in force.....

7. The appellants contended before us that both the reasons given by the Divisional Bench of the High Court were not valid, and that the suit was

not brought in accordance with the Eviction Act. At first, the appellants wished to raise a question as to the invalidity of the notice; but during the

course of the arguments, that ground was expressly abandoned. The case was thus argued only on the footing that the permission given by Mr.

Brijpal Singh Seth did not comply with s. 3 of the Eviction Act.

8. The material portion of s. 3, as it stood on the relevant date, read as follows :

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...

9. "District Magistrate" is defined by s. 2(d) of the Act, which reads :

"District Magistrate" includes an officer authorized by the District Magistrate to perform any of his functions under this Act.

10. The argument of the appellants was that the District Magistrate mentioned in s. 3 was a persona designata, and that either he or an officer

authorised by him to perform his functions could grant permission. According to them, in view of the provisions quoted above and in view also of

the provisions of s. 1(2) of the Code of Criminal Procedure, no Additional District Magistrate was competent to grant the permission, unless

authorised to do so by the District Magistrate. The order of the District Magistrate by which the case was made over to the Additional District

Magistrate (Rural Area) was characterised as a mere transfer and not an authorisation. It was contended that a transfer could only take place to a

person possession jurisdiction, and that jurisdiction under the present Act was confined only to the District Magistrate or an officer authorised by

him. The transfer of the case, it was contended, did not constitute such authorisation. Reliance was placed on the decision of a learned single Judge

of the Allahabad High Court reported in Kedar Nath 'V.' Mool Chand A.I.R. 1953 All. 62. and on the decision of the Nagpur High Court

referred to therein, P. K. Tare v. Emperor AIR 1943 26 (Nagpur)

11. Section 10 of the Code of Criminal Procedure, at the relevant time, provided as follows :

10(1). In every district outside the presidency-towns the Provincial Government shall appoint a Magistrate of the first class, who shall be called

the District Magistrate.

(2) The Provincial Government may appoint any Magistrate of the first class to be an Additional District Magistrate and such Additional District

Magistrate shall have all or any of the powers of a District Magistrate under this Code or under any other law for the time being in force, as the

Provincial Government may direct.

12. The Notification, which was issued about Mr. Brijpal Singh Seth and which has been quoted already, invested him with all the powers of the

District Magistrate under the Code of Criminal Procedure as well as under any other law for the time being in force. He was thus competent to

deal with an application under the Act for permission to file a civil suit without special authorisation from the District Magistrate. Learned counsel

for the appellants contended that the definition of "District Magistrate" clearly showed that in addition to the District Magistrate, only an officer

specially authorised by him could act under the Eviction Act, and he referred to sub-s. (2) of s. 1 of the Code of Criminal Procedure, which

provided :

It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any

special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for

the time being in force...

13. The argument was that the special jurisdiction created by the Eviction Act was not affected by s. 10(2) of the Code, in view of the provisions

of this sub-section. The argument overlooks the words "in the absence of any specific provision to the contrary", and because there is in the Code

of Criminal Procedure such a provision in s. 10(2), sub-s. (2) of s. 1 is excluded, and an Additional District Magistrate must be regarded as

possessing the powers under any other law including the Eviction Act.

14. The argument that the District Magistrate was a persona designata cannot be accepted. Under the definition of "District Magistrate", the special

authorisation by the District Magistrate had the effect of creating officers exercising the powers of a District Magistrate under the Eviction Act. To

that extent, those officers would, on authorisation, be equated to the District Magistrate. A persona designata is "a person who is pointed out or

described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character." (See Osborn's Concise

Law Dictionary, 4th Edn., p. 253). In the words of Schwabe, C.J., in Parthasaradhi Naidu v. Koteswara Rao I.L.R.(1923) . 47 Mad. 369,

personae designatae are ""persons selected to act in their private capacity and not in their capacity as Judges."" The same consideration applies also

to a well-known officer like the District Magistrate named by virtue of his office, and whole powers the Additional District Magistrate can also

exercise and who can create other officers equal to himself for the proposes of the Eviction Act. The decision of Sapru, J., in the Allahabad case,

with respect, was erroneous.

15. Reference was made to the definition of ""District Magistrate"" in the United Provinces (Temporary) Accommodation Requisition Act, 1947,

which includes an ""Additional District Magistrate"". This definition has been made wide for obvious reasons, because under s. 10(2) of the Code of

Criminal Procedure, the Additional District Magistrate has to be specially empowered. By including the Additional District Magistrate in the

definition of ""District Magistrate"", power is conferred by the Requisition Act itself whether or not the Provincial Government specially empowers

any particular Additional District Magistrate in that behalf. The Eviction Act, on the other hand, gave power to the District Magistrate to authorise

officers other than the Additional District Magistrates empowered by the Provincial Government, by defining the term ""District Magistrate

differently.

16. In view of the above, it is hardly necessary to go into the reasons given by Brij Mohan Lal, J.; but even those reasons are, with all due respect,

equally valid. By the act of transferring the case to the Additional District Magistrate, the District Magistrate must be deemed to have authorised

him to exercise his powers under s. 3 of the Eviction Act. However, it is not necessary to rely upon this aspect of the case because, in our opinion,

s. 10(2) of the Code of Criminal Procedure gave ample powers to Mr. Brijpal Singh Seth to accord permission for bringing the suit, and the order

of the District Magistrate, even if treated as a transfer, was valid.

17. In the result, the appeal fails, and is dismissed with costs.

18. Appeal dismissed.