A

SETH BALGOPAL DAS

v.

THE STATE OF U.P. & ORS.

April 8, 1976

[A. N. RAY, C.J., M. H. BEG AND JASWANT SINGH, JJ.]

B

U.P. (Temporary) Control of Rent and Eviction Act, 1947, *S.*3(2), *requirement of—Receipt of revision application by Additional District Magistrate, whether validated by practice in absence of rules or specific authorisation by Commissioner.*

The Rent Control and Eviction Officer, Dehradun. granted permission to the respondent landlady under s. 3 of the U.P. (Temporary) Control of Rent and
C Eviction Act, to file a suit for eviction of the appellant tenant, on the ground that the accommodation was required for her personal residence. The tenant filed a revision application under s. 3(2) of the Act, purporting to be made to the Commissioner, Meerut Division, but actually filed before the Additional District Magistrate who rejected it as time barred. The appellant tenant's further revision application, made under s. 7F of the Act, was rejected by the State Government, and then his petition under Article 226 was rejected by a Single Judge of the Allahabad High Court on two grounds: Firstly that neither the Act, nor the rules made thereunder had any provision enabling the Additional
D District Magistrate to receive the tenant's application under s. 3(2); and secondly, that the time spent in obtaining the certified copy of the District Magistrate's order could not be excluded under s. 12(2) of the Limitation Act, 1963. The appellant's special appeal was summarily rejected by a Division Bench of the High Court.

In appeal by special leave, the appellant contended before the Court that, as a practice had grown up in Dehradun, that the Additional District Magistrate
E receives the revision applications made to the Commissioner, the requirements of s. 3(2) should be deemed to have been sufficiently complied with.

Dismissing the appeal, the Court,

HELD : There is not even a rule on this subject made by the State Government. A wrong practice cannot possibly modify what naturally follows from the language if s. 3(2) of the Act, that the party must apply to the Commissioner directly and not through some other authority or official. For that purpose,
F proof of at least specific authorisation by the Commissioner, after the introduction of s. 3(2), was required. [1094C; 1095A & F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 222 of 1975.

Appeal by special leave from the judgment and order dated the 8th August, 1973 of the Allahabad High Court in Special Appeal No. 189 of 1972.

G

B. Sen, Mrs. Leila Seth, B. Mohan, Parveen Kumar and *O. P. Khaitan* for the appellant.

T. S. Krishnamoorthy Iyer and *P. K. Pillai* for Respondent No. 4

The Judgment of the Court was delivered by

H

BEG, J. The appellant, here, by special leave, is a tenant of premises in Dehradun in respect of which the landlord respondent No. 4 had sought permission, under Section 3 of the U.P. (Temporary) Control of Rent & Eviction Act III of 1947 (hereinafter referred to as 'the

Act'), to sue for his eviction. The permission was granted by the Rent Control and Eviction Officer, Dehradun, as long ago as 11 August, 1969, and, thereafter, the suit for ejectment of the appellant was filed on 19th November, 1969.

Section 3, sub. sec. (1) of the Act had merely imposed a bar on suits in Civil Courts filed without the permission of the District Magistrate except on certain grounds which are given there. The plaintiff-respondent, one Mrs. Sheila Kalha wife of a retired army officer, was given permission to file her suit on the ground that she required the accommodation for personal residence. She is said to have been living at considerable expense to her at New Delhi due to inability to live in her own house at Dehradun as it has been occupied by the appellant.

The tenant had applied on 19th August, 1969, for a certified copy of the order of the Rent Control Officer granting the landlord permission to sue and got its copy on 25th August, 1969. Thereafter, the tenant filed a revision application under section 3(2) of the Act, purporting to be made to the Commissioner, Meerut Division, but actually filed on 16th September, 1969, before an Additional District Magistrate of Dehradun who had forwarded it on to the Commissioner. The Revision Application was received in the Commissioner's Office on 24th September, 1969. It was rejected by the Commissioner on the ground that it was filed beyond the time prescribed by Section 3(2) of the Act which reads as follows :

> "(2) Where any application has been made to the District Magistrate for permission to sue a tenant for eviction from any accommodation and the District Magistrate, grants or refuses to grant the permission, the party aggrieved by his order may within 30 days from the date on which the order is communicated to him apply to the Commissioner to revise the order."

The State Government also rejected the revision application of the appellant tenant, filed under section 7F of the Act, against the Commissioner's order.

The appellant tenant then approached the Allahabad High Court with a petition under Article 226 of the Constitution. The petition was rejected by a learned Judge on 21st October, 1972, on two grounds : firstly, under Section 3(2) of the Act; and, secondly, that the time spent on obtaining the certified copy of the order of the District Magistrate could not be excluded under Section 12(2) of the Limitation Act of 1963. For the second proposition reliance was placed upon *Shyam Sunder Bajpai* v. *Commissioner Allahabad Division, Allahabad & Anr.*(1) and *Ram Lakhan* v. *Commissioner, Varanasi Division, Varanasi & Ors.* (2).

A Division Bench of the Allahabad High Court had rejected the tenant's Special Appeal summarily. This Court, however, granted special leave to appeal under Article 136 of the Constitution on 20th

(1) 1965 A.L.J. 211. (2) 1970 A.L.J. 909.

July, 1975. We need not express any opinion on the correctness of the second proposition here if we agree with the High Court's view on the first point because, in that case, the tenant's application would be time barred even if the time spent in obtaining the copy was excluded.

The only contention, put forward by Mr. B. Sen on behalf of the tenant-appellant, on the first point, is that there is a practice in Dehradun, acting on some instruction of the Commissioner, Meerut Division, to receive revision applications to the Commissioner through an Additional District Magistrate of Dehradun, who has, therefore, the Commissioner's authority to receive these applications. It was urged that the filing of the Revision application before an Additional District Magistrate should be deemed, in these circumstances, to be sufficient compliance with the requirements of Section 3(2) of the Act which provides, as it clear from a bare look at it, that the revision application lies before the Commissioner.

It is difficult to see how a practice could possibly modify the provisions of the Act. There is not even a rule on this subject made by the State Govt. under the provisions of Section 17 of the Act which authorises the Govt. to "make rules to give effect to the purposes of this Act." There are rules on other matters but not on such a matter.

Mr. B. Sen relied on a Division Bench decision of the Allahabad High Court in *T. C. Pasricha & Anr.* v. *The State of U.P.*(1) where it was held :

> "It appears that the Commissioner had authorised the District Magistrate to receive revisions meant for him. By so authorising, the Commissioner was only indicating the place and, the manner of representation of the revisions. Since the Rent Control Act did not either by itself or rules framed under it lay down the precise procedure in regard to the presentation of the revision, the Commissioner who was the authority entitled to entertain and decide the revisions was within his rights to prescribe the procedure in respect of representation of the revisions. The direction given by the Commissioner in 1946 with regard to the presentation of revision was valid and enforceable".

In *Pasricha's* case (supra), the Single Judge decision in *Seth Bal Gopal Das* v. *State of U.P.*(2) on the case now before us, was noticed by the Division Bench and distinguished on the ground that there was no evidence here to prove that there was any such practice. Both *Pasricha's* case (supra) and the case now before us come from the Dehradun District. We think it is difficult to reconcile the Division Bench decision in *Pasricha's* case, decided on 5th April, 1973, with the summary rejection of the Special Appeal No. 180 of 1973 on 8th August, 1973, which is under appeal before us, although we find that one of the learned Judges is common to both the Division Benches.

(1) Special Appeal No. 744 of 1971 decided on 5th April, 1973.
(2) 1973 A.L.J. 120.

We prefer the reasoning of the learned Single Judge in *Seth Bal Gopal Das* v. *State of U.P.* (supra) to the reasoning of the Division Bench in *Pasricha's* case (supra). A wrong practice cannot possibly modify what naturally and logically follows from the language in Section 3(2) of the Act. This provision says that the party aggrieved must "apply to the Commissioner to revise the order". The natural inference is that the party must apply to the Commissioner directly and not through some other authority or official.

It is true that Section 3(2) does not prescribe the manner and place of presentation of applications. But, unless there is some rule made to confer authority, upon the District Magistrate or the Additional District Magistrate concerned or his office, to act as the agent of the Commissioner, or a clear and specific authorisation by the Commissioner is proved, we fail to see how filing a revision application before the Additional District Magistrate can be deemed to amount to making the application to the Commissioner.

In *Pasricha's* case (supra), the Division Bench had gone to the extent of holding that some communication made by the Commissioner in 1946 to the District Magistrate of Dehradun, even a copy of which was not placed before the Court, could be shown by means of an affidavit of a party, to have been both established and to be enough to confer an authority on an Additional District Magistrate of Dehradun to receive applications on behalf of the Commissioner under the provisions of Section 3(2) of the Act which were introduced after 1946 according to the statement of facts in *Pasricha's* case (supra) itself. *Prima facie,* an authorisation cannot relate to a power or right conferred by a provision which could not be present to the mind of the Commissioner at all at the time when he is supposed to have made some communication to the District Magistrate as the provision for a revision in such a case did not even exist then. We, therefore, think that the reasoning of the Division Bench in *Pasricha's* case (supra) is unacceptable. The alleged practice cannot be held to have been even established. And, in any event, such a practice was not enough to confer authority to receive petitions on behalf of the Commissioner. For that purpose, proof of at least specific authorisation by the Commissioner, after the introduction of the new provision, was required.

The result is that we are unable to find any merit in the case of the appellant who has been able to hold up proceedings for his eviction long enough in respect of accommodation which, on the allegations made on behalf of the landlord (this term includes the "land-lady"), has been required to meet the landlord's dire personal needs since at least 1969. We hope that the trial of the suit in such a case will not be delayed now.

We dismiss this appeal with costs throughout.

M.R. *Appeal dismissed.*