

SYED ASADULLAH KAZMI

v.

THE ADDL. DISTRICT JUDGE,] ALLAHABAD
AND OTHERS

July 23, 1981

[R.S. PATHAK AND A.D. KOSHAL, JJ.]

Landlord and tenant—Prescribed authority allowing the landlord to recover his building tenanted, but the appellate authority modifying the order of part recovery only and the said order becomes final due to successive failures in appeal by the tenant including in the Supreme Court—Any application to re-open the issue due to the subsequent event i.e. the death of the landlord is not maintainable.

In February 1965, Bungalow No. 16-D, Beli Road (now 26 B.K. Banerjee Road), Allahabad was allotted to the appellant. On an application made in April 1975 the prescribed authority allowed, on 24th May, 1976, the application directing the release of the bungalow to the landlord. On appeal the appellate authority by its order dated 25th March, 1977 modified the order by releasing only a portion of the building and by permitting the appellant to continue in the remaining portion with a direction to the prescribed authority to divide the bungalow accordingly. The said order dated 25th March, 1977 became final, since the writ petition challenging the said order was dismissed. On the death of the landlord the appellant filed a fresh application before the prescribed authority not to proceed with the partition scheme. Since the prescribed authority refused to take note of this subsequent event, the issue has come up before this Court by way of special leave.

Dismissing the appeal, the Court

HELD : 1. The order dated 25th March, 1977 of the appellate authority releasing a portion of the premises in favour of the third respondent and leaving the remaining portion in the tenancy of the appellant acquired finality when the proceedings taken against it by the appellant failed. The prescribed authority was bound to give effect to that final order and was not acting outside its jurisdiction or contrary to law. [79 C-D]

2. It is true that subsequent events must be taken into account by a statutory authority or court when considering proceeding arising out of a landlord's petition for ejection of a tenant on the ground of the landlord's personal need. But in the present case the order for release of a portion of the accommodation acquired finality before the death of the landlord and the controversy concluded by it could not be reopened now. [79 E-F]

3. The present appeal being limited to the question which arose before the prescribed authority on the application of the appellant after the proceedings for release had acquired finality, it is not open even to the Supreme Court, to reopen the proceeding for release. [79 G-H]

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1440 of 1979.

Appeal by special leave from the judgment and order dated the 15th November, 1978 of the Allahabad High Court in Civil Misc. Writ No. 8736 of 1978.

B *R.K. Garg, Manoj Swarup and Miss Lalita Kohli* for the Appellant.

Yogeshwar Prasad, and Mrs Rani Chhabra, for the Respondent.

The Judgment of the Court was delivered by

C PATHAK, J. The appeal by special leave is directed against a judgment of the Allahabad High Court dismissing a tenant's writ petition arising out of proceedings consequential upon an order of ejection.**D** The bungalow, 16-D, Beli Road, Allahabad, was owned by Raj Kumar Sinha, father of the third respondent, Kailash Shanker Sinha. In February 1965, the bungalow was allotted to the appellant, Syed Asadullah Kazmi, and he was accordingly treated as the tenant of the premises. At the time, Raj Kumar Sinha, with his family, including the third respondent, occupied another house at 14-D, Beli Road, Allahabad. In October 1973, the third respondent applied for the release of the bungalow 16-D, Beli Road, Allahabad, now described as 26, B.K. Banerjee Road, Allahabad. The attempt failed. A fresh application was made in April, 1975. It was allowed by the Prescribed Authority on 24th May, 1976 after overruling an objection filed by the appellant. The appellant appealed and the appellate authority by its order dated 25th March, 1977 modified the order of the Prescribed Authority inasmuch as a portion only of the building was released in favour of the third respondent and the appellant was permitted to continue in the remaining portion, and the Prescribed Authority was directed to divide the bungalow accordingly. The appellant filed a writ petition in the High Court against the order of the Appellate Authority, but the writ petition was dismissed. Against its dismissal he applied in this Court for special leave to appeal and on 3rd January, 1978, that petition was also dismissed.**H** To give effect to the direction of the Appellate Authority, the Prescribed Authority meanwhile initiated proceedings for demar-

cation of the premises and a partition scheme was prepared. During the preparation of the partition scheme, Raj Kumar Sinha, the third respondent's father, died. On 22nd September, 1978, the appellant filed an application before the Prescribed Authority bringing the fact of this death to its notice and praying that the partition scheme should not be prepared. The Prescribed Authority rejected the application. Appeal by the appellant was dismissed by the Appellate Authority on the ground that the order dated 25th March, 1977 directing a division of the premises had become final and the controversy could not be re-opened. The appellant then filed a writ petition before the High Court, and the High Court has maintained the view taken by the Appellate Authority and dismissed the writ petition by its judgment dated 25th November, 1978.

We are of opinion that the High Court is right. Plainly, the order dated 25th March, 1977 of the Appellate Authority releasing a portion of the premises in favour of the third respondent and leaving the remaining portion in the tenancy of the appellant acquired finality when the proceeding taken against it by the appellant failed. The order having become final, the Prescribed Authority was bound to give effect to it. In doing so, the Prescribed Authority was not acting outside its jurisdiction or contrary to law. The application moved by the appellant before the Prescribed Authority requesting it to take into account the death of Raj Kumar Sinha was misconceived, because it did not lie with the Prescribed Authority to reopen proceedings which had been taken to the highest Court and had become final. It is true that subsequent events must be taken into account by a statutory authority or court when considering proceedings arising out of landlord's petition for ejection of a tenant on the ground of the landlord's personal need. But in the present case, the order for release of a portion of the accommodation required finality before the death of Raj Kumar Sinha and the controversy concluded by it could not be reopened,

The appellant has vehemently urged that being the highest court of the land it is open to us to reopen the proceeding for release initiated by the third respondent. We do not think we can. The present appeal is limited to the question which arose before the Prescribed Authority on the application of the appellant after the proceedings for release had acquired finality and we must be confined to the consideration of that that question alone. We cannot reopen that which has become final after this court dismissed the special leave petition of the appellant. We may point out that we have been referred to s. 24 of the U.P. Urban

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A Building Act, 1972 in support of the contention that the Prescribed Authority retains control over ejection proceedings, but we are not impressed by that contention.

The appeal fails and is dismissed with costs.

B S. R. *Appeal dismissed.*