Smt. Abida Begam and ors. Vs. Rent Control and Eviction Officer, Lucknow and anr.

Smt. Abida Begam and ors. Vs. Rent Control and Eviction Officer, Lucknow and anr.

SooperKanoon Citation : sooperkanoon.com/465361

Court : Allahabad

Decided On : Mar-23-1959

Reported in : AIR1959All675

Judge : Nasirullah Beg and ;V.D. Bhargava, JJ.

Acts : Uttar Pradesh (Temporary) Control of Rent and Eviction Rules, 1949 - Rules 6 and 7; Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Sections 7(2), 13 and 16; Constitution of India - Articles 19(1), 19(5) and 245; Code of Civil Procedure (CPC) , 1908 - Sections 9 and 80

Appeal No. : Special Appeal No. 15 of 1957

Appellant : Smt. Abida Begam and ors.

Respondent : Rent Control and Eviction Officer, Lucknow and anr.

Advocate for Def. : Junior Standing Counsel and ;K.B. Verma, Adv.

Advocate for Pet/Ap. : Rameshwar Dayal, Adv.

Judgement :

V.D. Bhargava, J.

1. This is a special appeal against the decision of a learned single judge of this Court in a second appeal filed by the plaintiff, who had filed a suit for injunction restraining the defendant No. 2, Ram Khelawan, from obtaining possession of the room in dispute, under an allotment order passed in his favour by the Rent Control and Eviction Officer, Lucknow, and an order of permanent injunction restraining the Rent Control and Eviction Officer,defendant No. 1, from enforcing the order of allotment in favour of Ram Khelawan.

2. The suit was dismissed by both the courts below as well as by the learned single Judge. Hence this special appeal.

3. The plaintiff, Abban Saheb, came on the allegation that he. was the owner of a certain house of which the room in dispute was a part. He was in occupation of the entire house except this room. It has previously been let out to one Nand Kishore about 12 or 13 years back from the date of the suit. After some protracted litigation the appellant was able to get a decree of ejectment as againstNand Kishore and after execution of the decree he obtained actual possession of the room on 13-8-1950.

4. On the next day i.e., on 14-8-1950 the plaintiff informed the Rent Control and Eviction Officer of the vacancy and prayed that the room should be released in his favour, as he required it for his own needs. It is contended that one Shyam Sunder made on the same day an application that there was a boy Ram Khelawan whom Shyam Sunder knew and, therefore, he requested the District Magistrate that the room should be allotted to Ram Khelawan because Ram Khelawan wanted to start a betel shop. On the same day the Rent Control and Eviction Officer asked the landlord to supply the particulars of the accommodation.

5. On 16-8-1950 the plaintiff supplied the particulars and again made a request that he genuinely needed the accommodation for his personal use and it should be allotted to him. Thereafter, according to the plaintiff, he was never asked to produce any evidence about the bona fide needs of the plaintiff, but, on the other hand, on 19-8-1950 the room was allotted to Ram Khelawan and on 24-8-1950 intimation to this effect was communicated to the plaintiff. The plaintiff on the next day, that is, 25-8-1950 filed the suit.

6. On behalf of the defendant No. 1, the Rent Control and Eviction Officer it was contended that he had acted on behalf of the Executive Government and the suit was not maintainable for want of notice under Section 80 C. P. C., that the suit was barred under Sections 13 and 16 of the U. P. Control of Rent and Eviction Act (Act III of 1947), that the allotment order had been validly passed in favour of the defendant No. 2 when the accommodation fell vacant and the plaintiff had no cause of action against defendant No. 1. Defendant No. 2 did not file any written statement though he was present throughout the proceedings.

The trial court and the lower appellate court held that the suit was bad for want of notice as against defendant No. 1, and the first two courts as well as the learned single Judge has held that the suit was barred under Section 16 of the U. P. Control of Rent and Eviction Act.

7. In appeal it has been contended that the order passed by the courts below was in direct defiance and in breach of the rules made under the U. P. Rent Control and Eviction Act which were binding upon the Rent Control Officer. Particular reliance was placed on Rules 6 and 7 made under the Act which are as follows : --

'6. Occupation by landlord : -- When the District Magistrate is- satisfied that an accommodation which has fallen vacant or is likely to fall vacant is bona fide needed by the landlord for his own personal occupation the District Magistrate may permit the landlord to occupy it himself.

7. Allotment of a portion of accommodation: --Where a portion of accommodation falls vacant and the owner is in occupation of another portion thereof, the District Magistrate shall, before making the allotment order, consult the owner and shall so far as possible make the allotment in accordance with the wishes of the owner.'

It was argued that so far as the effect of these two Rules is concerned it has been fully considered in several decisions of this Court. Reliance was placed on three decisions reported in Ram Narain Tewari v. Ram Chander Sharma, : AIR1953 All354 ; Chandra Bhan v. Rent Control and Eviction Officer, Agra, : AIR1954 All6 and Bhakat Siromani v. Rent Control and Eviction Officer, : AIR1954 All118 and one reported in Prem Narain v. Girish Chandra, 1954 All LJ 62.

8. In 1953 All LJ 83 : (AIR 1954 All 354) (supra), it was held by a Bench of this Court that :--

'Rule 6 framed under Section 17 of the U. P. (Temporary) Control of Rent and Eviction Act requires the District Magistrate to permit the landlord to occupy an accommodation which has fallen vacant or is likely to fall vacant, if it is bona fide needed by him (i. e., the landlord). If there is nothing to show in the order, which was passed by the Rent Control and Eviction Officer, that he exercised his mind on the point whether the need of the landlord was of a bona fide character or not and the sole consideration with him appears to have been the fact that the need of the other person was most genuine, the order of allotment cannot be allowed to stand.'

That decision had also interpreted Rule 7 and it was observed that : --

'If a portion of the building, a substantial portion of which is already in occupation of the landlord, falls vacant, then before passing any order in regard to the allotment of the vacant portion, it is obligatory on the Rent Control and Eviction Officer under Rule 7 framed under Section 17 of the U. P. (Temporary) Control of Rent and Eviction Act to consult the owner and to make, as far as possible, the allotment in accordance with the wishes of the owner and if he fails to do so, the order of allotment cannot be allowed to stand.'

In that case there was nothing in the order of allotment to show that the Rent Control and Eviction Officer exercised his mind on the point whether the need of the landlord was of a bona fide character or not and the Rent Control and Evic-tion Officer had not consulted the landlord when he was occupying a major portion of the house and only a minor portion of it was to be allotted.

We respectfully agree with the observations made by the learned Judges in that case and in the present case also we find that there is nothing on the record to show that the Rent Control and Eviction Officer ever cared to enquire into bona fides of the needs of the landlord, nor did he issue a notice to the landlord when only one of the rooms of the big house had fallen vacant. Therefore, in our opinion, the order of the Rent Control and Eviction Officer had been passed without

compliance of the Rules.

9. The second case relied upon by the learned counsel which is reported at page 440 of the same Volume : AIR1954 All6 is also a Bench decision where it was held : --

'When the Rent Control and Eviction Officer decides a question of fact the result of which deter-mines the right o a person to the benefit of Rule 4, he acts in a quasi-judicial capacity. Although the act of issuing an allotment order may be administrative act, the consideration which must precede the doing of that act in a case (such as the present) in which the rights of one party depend upon the existence of a particular state of facts is of the nature of a quasi-judicial consideration. He cannot make that decision in his discretion but must reach his conclusion after hearing the persons- whose rights arc likely to be affected and after giving them a full opportunity of placing their case before him. This has not been done in the present instance and the order of the 6th June cannot, therefore, in our opinion, be sustained.'

In that case actually it was Rule 4 which was under consideration. Where rights of parties are affected, as has been held in that case, we respectfully agree that the proceedings are of quasi-judicial character. In any event, the principles of natural justice are to be followed and an opportunity in that event, should be given to the parties to produce their evidence, and the decision should be arrived at after that enquiry.

If the order of the Rent Control and Eviction Officer is a pure and simple order of allotment that may be purely an administrative order. But if an order is to be passed under Rules 4, 6 or 7, then, in that event, since the proceedings are of a quasi-judicial nature, we think the order itself would be of a quasi-judicial nature and if the provisions of the Act are not followed or even if the principles of natural justice are not followed, the order would not be sustainable.

10. In the present case, the right of the plaintiff to occupy the house was a valuable right. If he needed it bona fide he has under the Rules a right of allotment in his favour. For that purpose a notice. was absolutely necessary which

admittedly had not been given to him. Secondly, as requir-ed by Rule 7, as has already been mentioned, no en-quiry was made from him about the desirability of the tenant.

11. In the third decision reported in : AIR1954 All118 , wherein the object of Rule 7 has been enunciated, it was held:

'In our opinion the purpose of this rule (Rule 7) is to avoid, as far as possible, the friction and difficulties which may arise in those cases in which an owner has, in effect, to share his house with a tenant of whom for some reason he may disapprove; and that when the rule provides that the Rent Control Officer shall 'consult the owner' it means that the owner has to be consulted as to the suitability of the proposed tenant .....'

This authority also fully supports the contention of the plaintiff. It was argued by the learned counsel for the plaintiff, that here, the allotment has been made in favour of one Ram Khelawan for opening a betel shop. There all sorts of undesirable people might visit and since the disputed room is in a portion of the house, wherein the appellants are themselves living, they would be most reluctant to have that kind of shop in their house and under the circumstances this allotment order should not have been made.

12. In 1954 All LJ 62, a Bench of this Court of which one of us was a member had held that:

'If a Rent Control Officer does not apply his mind and does not take into consideration the request of the landlord for allotment of the whole or part of his own house to him and makes an[allotment in favour of a third party, such an orderI would be an invalid order.'

It was thus contended by the learned counsel for the appellants that there cannot be the least doubt that in the present case the order had been made without the consent of the landlord, hence the order was bad. On behalf of the Rent Control Officer it was contended, that though these provisions were not followed, but even if these provisions had been followed, the discretion was with the Rent Control

Officer, therefore, he could exercise the right in any manner that he liked.

Reliance was placed on the words 'the District Magistrate may permit the landlord to occupy it himself' and it was argued that it was not obligatory on the District Magistrate to allot the house to the landlord because the word used was not 'shall' but 'may' which is not mandatory. Similarly reliance was placed on the words 'the District Magistrate shall, before making the allotment order, consult the owner and shall 'so far as possible' make the allotment in accordance with the wishes of the owner.'

It was, therefore, argued that since in both the Rules the words were only permissory and enabling ones they would not have a compulsory force and, therefore, non-compliance of these Rules does not materially affect.

13. In our opinion, the words may undoubtedly be only empowering but it has been so often decided as to have become almost an axiom, that, in public statutes, words only directory, permissory or enabling may have a compulsory force, where the thing to be done is for the public benefit or in advancement of public justice. It was so held in Reg v. Tithe Commissioners, (1849) 14 QB 459.

14. In Julius v. Lord Bishop of Oxford, (1880) 5 AC 214 at p. 223, Lord Earl Cairns had held:

'But there may be something in the nature of the thing empowered to be done, something in the ebject for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so.'

15. In State of U. P. v. Manbodhan Lal, : (1958)IILLJ273SC , their Lordships quoted Craw-ford on 'Statutory Construction' -- Article 261 at page 516:

'The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be

ascertained not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other .....'

Thereafter they held:

'On the other hand, it is not always correct to say that where the word 'may' has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceedings invalid.'

16. Counsel for respondent No. 2 Ram Khela-wan, had placed reliance on a Bench decision of this Court in Ram Autar v. Rent Control and Eviction Officer, Jhansi, 1959 All LJ 8: (AIR 1959 All 877), where their Lordships were considering Rule 3 and it was held that Rule 3 was not mandatory it was only directory, They held that:

'There is no restriction imposed by the Act with regard to the period within which an order shall be made, and in our opinion the State Government has no power to impose such a restriction by a rule. Under Section 17 of the Act the State Government is empowered to make rules 'to give effect to the purposes of this Act.'

The purposes of the Act are to control the letting and the rent of available accommodation and to prevent the eviction of tenants therefrom and we are unable to hold that a rule which severely (?) restricts the powers of a District Magistrate to control the letting of accommodation conferred upon him by the Act can properly be described as a rule giving effect to the purposes of the letter.' If the meaning of the decision was that the power of the District Magistrate under Section 7 could not be regulated by the rules at all, then in that event, we respectfully disagree with the aforesaid decision. We might have been inclined to refer this question to a larger Bench but since technically that authority has been given under Rule 3, and there are already several decisions of this Court, where Rules 6 and 7 have been held mandatory, it is not necessary for us to refer this matter to a larger Bench.

17. The power which has been given under Section 7 (2) to the District Magistrate is wholly un-canalised power & it may result in placing an absolute restriction on the enjoyment of the property by the landlord. If that section had stood by itself it might have been liable to be challenged under Article 19(1)(f) of the Constitution which provides:

'19 (1) All citizens shall have the right .....

(f) to acquire, hold and dispose of property?' This fundamental right, which has been given, is subject to Sub-Article (5) which lays down: 'Nothing in Sub-clauses, (d), (e) and (f) of the said clause shall affect the' operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.'

A landlord could either let it out to the tenant and enjoy the rent or he could occupy it himself and thus hold it and enjoy the occupation of the house. In the first case whether a tenant is A, B or X, Y it is immaterial. His right to the property is unaffected, if he gets the rent, but in case he wants to occupy the property himself or himself with somebody else then, in that event, if he is stopped from occupying it himself his right to hold the property would be affected.

18. Section 7 (2) of the U. P. Control of Rent and Eviction Act provides:

'The District Magistrate may by general or special order require a landlord to let or not to let to any person any accommodation which is or has fallen vacant or is about to fall vacant.'

This section, as we have already mentioned, is in too wide terms and there are no restrictions imposed on the exercise of his discretion and that being of subjective nature is also not justiciable. Therefore, unless they were qualified and the manner in which that right would be exercised would be indicated, this section according to us would infringe the fundamental right of the owner.

It was for the purpose of giving effect to the Act that Rules were framed under Section 17 and therein it was provided how this discretion was to beexercised. Therefore in our opinion, the rules which had been framed, in order to control and regulate the discretion under Section 3, have been made 'in order to give effect to the Act.'

19. The Act had been framed for the purpose of control of letting and the rent of residential and non-residential accommodation and to prevent eviction of tenants therefrom. The Act was not in any way framed to affect the rights of the owners to occupy the house if they so desired and if they were actually in need of it themselves. The main object of the Act as shown in the preamble was that the landlord may not charge a higher rent or if they have to let out, may not choose the tenants.

Rule 3 which provides that the allotment should be made within thirty days is a most salutary rule. A landlord is entitled to the rent from the date a house is vacated. If Rule 3 was not there it was open to the District Magistrate not to pass an allotment order for two, three or even five years or to direct the landlord not to let it out to any person till further orders.

There the landlord would lose his rent and his right to hold & enjoy the property would be so seriously affected as to result practically in the non-enjoyment of the property. Therefore, a reasonable restriction was placed, among others, that in case the Rent Control Officer is not able to allot, it was open to the landlord to nominate a tenant to whom the accommodation will be allotted. In that event, it could not be said that the landlord would lose on account of the action of the District Magistrate. Even in that case, he could allot it to somebody else if he could give valid reasons for so allotting.

20. Similarly Rules 6 and 7 have been made to preserve the right of the landlord, if he wants to occupy the house himself, or to choose a tenant if he is the occupant of a portion of it.

21. The action under Section 7 which is taken by the District Magistrate is primarily in the nature of an administrative action and in our opinion it is within the

competence of the Legislature to delegate its authority to the Government to frame rules in accordance with which that administrative discretion would be exercised. That discretion is not primarily of a judicial nature and in our opinion it is always open, if the Act so provides, to provide for Rules.

When once that authority is delegated as in the present case, we think it. has properly been delegated, the exercise by the State Government of that power would be an exercise of that power by the Legislature itself and it would be treated as if the rules had been expressed in the first instance in the Act itself. It was so held in National Telephone Company v. Baker, (1893) 2 Ch 186 at page 203.

22. The rules can be challenged-

(i) if they are not reasonable and not convenient for carrying out the Act into effect.

(ii) if the rules relate to matters outside the scope of the Act,

(iii) if they relate to matters not provided in the Act, and

(iv) if they are inconsistent with the provisions of the Act.

Here we find that the State Government in framing these Rules had neither exceeded their power, nor the rules are inconsistent, unreasonable or inconvenient. In the circumstances we think that the Rules made under the Act, when they had been made for the purpose of giving effect to theAct, should be deemed to be part and parcel of theAct itself.

23. From the above discussion it is clear that, the order of the Rent Control and Eviction Officer cannot be supported as it was in direct breach of Rules 6 and 7 of the provisions.

24. The next question is whether Sections 13 and 16 of the Rent Control and Eviction Act bars the suit. So far as Section 13 is concerned no suit or pro-ceeding is taken against any person for anything which is done in good faith. In this case it is the order itself which is being challenged, and no suit for damages has been filed against the State for any action. Therefore Section 13 does not come into play. As regards Section 16, learned single Judge had held that the suit was

barred on its account. Section 16 of the Act provides:

'No order made under this Act by the State Government or the District Magistrate shall be called in question in any court.' Section 16 of the U. P. Control of Rent and Eviction Act very much corresponds to Section 16 of the V. P. [Temporary) Accommodation Requisition Act (Act XXV of 1947) and the word 'question' had come for interpretation before this Court in a Divisional Bench case in Ram Chandra v. District Magistrate of Aligarh, : AIR1952 All520 , and the Bench came to the conclusion that the word 'question' meant 'called in question as. regards its reasonableness or practicability' and could not mean 'challenging its legality'. It was, held: 'Where the authority exceeds the powers conferred upon it or makes an order disregarding the conditions subject to which and the limits up to which it can pass an order, the Civil Courts can certainly interfere. The power of the Civil Court to question whether the order was intra vires or ultra vires the authority making it is not taken away by the section.'

In Secretary of State v. Jatindra Nath AIR 1924 PC 175, their Lordships of the Privy Council held:

'The words of this statute imposing finality upon the orders of the Board of Revenue in such a situation appear to their Lordships not only to be imperative but most salutary.

Two conditions, however, must be noted; the first is, that mentioned, viz., that fundamental irregularity, that is to say, a defiance of or non-compliance with the essentials of the procedure would still give ground for questioning the proceedings in a Court of law .....'

Here in the present case the question is whether there had been an irregularity by direct defiance or non-compliance of the Rules 6 and 7 or not. If there has been, then in our opinion the Civil Courts would have jurisdiction to interfere and the finality placed by Section 16 would no longer be available as defence.

25. In Secretary of State v. Mask and Co , their Lordships of the Privy Council bad held:

'It is settled law, that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.'

We, therefore, think that the learned single Judge and the courts below were not right in holding that Section 16 of the Act barred the present suit.

26. Learned Counsel for defendant No. 1, the Rent Control Officer, had contended that so far as he is concerned as no notice under Section 80, C. P. C. had been given, the suit as against him was bad and, therefore, so far as he is concerned no order could be passed as against him. Formerly there was a conflict of decisions as to whether Section 80 applied to suits whether the relief claimed was of perpetual injunction or not, but now this matter has been set at rest in Bhagchand v. Secretary of State, , which has approved the view of Calcutta, Allahabad and Madras decisions and which has held that this section applies to all kinds of suits.

Therefore, certainly so far as defendant No. 1 is concerned, no relief could be granted in the suit itself, but the relief certainly can be granted as against defendant No. 2 that he would be restrained from taking possession of the premises under the allotment order which has been passed.

27. It may not be possible for us to grant a decree in the suit, but, in spite of that fact, we think that this Court has a jurisdiction under Art, 226 of the Constitution to grant the relief as against the defendant No. 1, even though this matter had not come in its writ jurisdiction on an application under Article 226. This we think necessary because if in the office of the Rent Control Officer the allotment order continues in favour of Ram Khelawan and Ram Khelawan is restrained from taking possession, there is likely to be a conflict and it may be difficult for the Rent Control Officer to have any further allotment order.

28. Therefore, we allow the appeal, set aside the decree of the courts below and issue a rnanda-mus to the Rent Control and Eviction Officer, Luclc-now to act in

accordance with law and direct that defendant No. 2 be restrained from taking possession of the property. The respondent No. 1 shall give full opportunity to the plaintiff to consider his needs and if he comes to a conclusion that it is genuinely needed by the appellants he may allot the premises to him.

In case he finds that the. need is not genuine, he will consult the landlord as to the tenant to whom it should be allotted and the allotment order shall be made as far as possible to the nominee of the landlord. The appellants are entitled to their costs throughout from defendant No. 2. The defendant No. 1 shall bear his costs throughout.