
(1958) 01 AHC CK 0010

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 1761 of 1956

Abdul Hamid

APPELLANT

Vs

The Addl. Commr., Alld. Div., Alld. and others

RESPONDENT

Date of Decision : 10-01-1958

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7A, 7A(1)

Citation : (1958) 28 AWR 253

Hon'ble Judges : V.G. Oak, J

Bench : Single Bench

Advocate : Sri S.N. Kacker, for the Appellant; S.C. for Opposite parties, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Oak, J.—This writ petition is directed against an order of the learned Addl. Commr., Alld. allowing a revision u/s 7-A, UP (Temporary) Control of Rent and Eviction Act. Abdul Hamid is the Petitioner. Haji Abdul Shakoor is the principal opposite party. 1 he Petitioner's, Pairokar, Mohammad Ahmad has filed an affidavit. Haji Abdul Shakoor has filed a counter affidavit.

2. According to Mohammad Ahmad's affidavit, opposite party No. 3 (wrongly quoted in the affidavit as opposite party No. 4) is the landlord of certain premises in Kanpur City. These premises contain a godown largely occupied by hide merchants. The landlord is in occupation of another portion in the same premises, where he carried on the business of selling milk. At one time one Syed Ahmad was in possession of the godown. In May 1955 the landlord obtained an order from the Rent Control and Eviction Officer releasing the accommodation for his own use The godown remained locked up for a long time. The landlord was trying to let out the godown on a high rent. The Petitioner applied for allotment of the godown in his name. On 16-1-1956 the District Magistrate allotted the godown to the Petitioner.

3. But the Petitioner was unable to get possession over the godown. He, therefore, applied for assistance u/s 7-A of UP Control of Rent and Eviction Act. A notice was issued to the landlord fixing on 28-2-1956 for hearing objection, if any. Instead of contesting the said notice, the landlord filed a revision before the Commr. of Alld. Div. The revision was disposed by the Addl. Commr. of Alld., on 28-4-1956. He allowed the revision, and set aside the order of the Rent Control and Eviction Officer. Abdul Hamid has therefore, filed the present writ petition for quashing the learned Addl. Commr.'s order dated 28-4-1956.

4. Two points have been urged for the Petitioner. Firstly, it was pointed out that, the landlord did not wait till an order was passed against him u/s ub S. (2) of S. 7-A of UP Control of Rent and Eviction Act. As soon as a notice was issued u/s ub-S. (1) of S. 7-A of the Act, the landlord rushed before the Commr. in revision. It was urged for the Petitioner that, no revision lay against a mere notice.

5. Sub-section (4) of S. 7-A provides for revisions to the Commr. Sub-section (4) of S. 7-A states:

No appeal shall lie from any order passed by the District Magistrate under this section, but the Commr. may revise the said order if he is satisfied that the District Magistrate has acted.....and make such order as he thinks fit.

6. Sub-section (4) empowers the Commr. to revise "the said order " The expression "the said order" has reference to the expression "any order" used earlier in the Sub-section. In other words, the Commr. may revise any order passed by the District Magistrate u/s 7-A. Now, an order issuing notice u/s ub-S. (1) is itself an order u/s 7-A. Such an order comes within the description of "any order passed by the District Magistrate under this section." So a mere order issuing notice u/s ub-S (1) of S. 7-A is also revisable u/s ub-S. (4) of S. 7-A. It is true that an order u/s ub-S. (2) is revisable. But in some cases complications may arise, if a party waits till an order is actually passed u/s ub-S. (2). It may be prudent to file a revision against the order issuing a notice before an order is actually passed u/s ub-S. (2).

7. The second contention raised on behalf of the Petitioner is that, no revision lies from a mere order of allotment to the Commr. It was urged that the Commr. had no power to set aside the order of allotment itself.

8. Annexure "D " to the affidavits a copy of the Addl(sic) Commr.'s order dated 28-4-1956. That order opened thus:

This is a revision by the landlord arising out of a case u/s 7A of the Control of Rent and Eviction Act.

9. The operative part of the order runs thus:

In the circumstances stated above, the revision is allowed and the order of the Rent Control and Eviction Officer is set aside. If it is considered necessary to take further allotment proceedings in respect of this accommodation, this should be

done in accordance with law.

10. It is not clear from the order dated 28-4-1956 whether the learned Addl. Commr. was merely cancelling the notice issued u/s 7-A, or was also cancelling the allotment order dated 15-1-1956. But the reference to fresh allotment proceedings suggests that, it was his intention to render the order dated 16-1-1956 ineffective. The question arises whether the order of allotment could be so cancelled.

11. Orders of allotment are passed u/s 7 of the Act. There is no provision for filing revisions u/s 7 of the Act. We have seen above that, Sub-section (4) of S. 7-A makes provision for revision against orders passed u/s 7-A. In disposing of a revision u/s sub-S. (4) of S. 7-A, the Commr. "may make such order as he thinks fit." Sections 7 and 7A are closely connected. There is authority for the view that in dealing with revisions u/s 7A, the Commr. is entitled to consider the propriety or validity of the allotment order passed u/s 7 of the Act. If the Commr. finds that the allotment order u/s 7 of the Act is improper or illegal, there is no good reason why the Commr. cannot go to the length of setting aside the allotment order itself. Such a step would be within the scope of the expression "may make such order as he thinks fit" appearing in Sub-section (4) of S. 7A. So, even if it is assumed that by his order dated 28-4-1956 the learned Addl. Commr. actually set aside the order of allotment dated 16-1-1956, it cannot be said that the learned Addl. Commr. acted beyond his jurisdiction. The learned Addl. Commr. indicated the possibility of fresh allotment proceedings. It will be always open to the Petitioner to press his claim, when such fresh allotment proceedings are drawn up.

12. The learned Addl. Commr. pointed out in his order that, the order of allotment was passed without previously consulting the wishes of the landlord as required by R. 7 framed under UP (Temporary) Control of Rent and Eviction Act. This position has been challenged on behalf of the Petitioner. Annexure "A" to the affidavit is a copy of the report of an Inspector dated. 15-1-1956, It was mentioned in that report that, he had previously served a notice upon the landlord in connection with the proposed allotment. This position has been denied in paragraphs 46 and 47 of the counter affidavit. The affidavit did not mention that, there was actual prior consultation with the landlord u/R. 7. On the contrary, it was urged in the writ petition that, no such consultation with the landlord was necessary in the circumstances of this case. I, therefore, take it that, the view taken by the learned Addl. Commr. that there was no prior consultation in the present case is correct.

13. It is conceded in the affidavit that, the landlord was occupying another portion of the premises. This is a case of allotment of one portion of the premises to the Petitioner, while another portion was in the occupation of the landlord. The circumstances attracted the operation of R. 7. The order of allotment in Petitioner's favour was in contravention of R. 7. The learned Addl. Commr. was, therefore, right in his view that, the order of allotment was illegal. On his view,

he was justified in setting aside the allotment order, and cancelling the notice u/s 7A.

14. The petition u/Art. 226 of the Constitution is dismissed with costs.