
(1973) 09 AHC CK 0041
In the Allahabad High Court
Case No : C.M. Writ No. 649 of 1972

Abdul Wahid Khan

APPELLANT

Vs

Rent Control And Eviction Officer, Etawah and another

RESPONDENT

Date of Decision : 13-09-1973

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1973) 43 AWR 572

Hon'ble Judges : Gopi Nath, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopi Nath, J.—This is a petition Under Article 226 of the Constitution. It challenges an order of Respondent No. 1 dt. 31-1-1972. By that order the Respondent No. 1 directed the Petitioner to restore a latrine for the use of Respondent No. 2. The order was passed u/s 7-D of the U.P. (Temp.) Control of Rent and Eviction Act, 1947, hereinafter referred to as the Act. The Petitioner is a landlord of an accommodation No. 78, Sabitganj, Etawah and the Respondent No. 2 is a tenant thereof. There was a latrine in front of this house which, according to the Respondent No. 2, was used by him. The Petitioner demolished the latrine. The Respondent No. 2 thereupon filed an application u/s 7-D of the Act for the restoration of the latrine, which according to him, was an amenity enjoyed by him since 1940. The Petitioner contested the application on the ground that the latrine was not meant for the use of Respondent No. 2 but was constructed for the use of one Roshan, who was a tenant of another accommodation described as Kotha No. 77. It appears, that after the death of Roshan that accommodation was let out to one Mahfooz Ali and there was some dispute between Mahfooz Ali and Respondent No. 2 in respect of the use of this latrine. By an award dt. 12-7-1969 given by the Petitioner it was held that Mahfooz Ali could remove the latrine but if the relations between the parties continued to be cordial the latrine would remain at its place which impliedly

meant that the latrine could be used by the Respondent No. 2 also by the agreement of Mahfooz Ali.

2. Respondent No. 2 in his application u/s 7-D alleged that he continues to use the latrine which was an amenity enjoyed by him. The Petitioner acted in contravention of Section 7-D of the Act in withholding that amenity by demolishing the latrine. The Petitioner's case was that the latrine was not an amenity meant for the enjoyment of Respondent No. 2 since the Petitioner had another latrine in his accommodation. It was further alleged that the Petitioner had not been using the latrine.

3. Both parties produced oral as well as documentary evidence before the Respondent No. 1. The Petitioner (?) produced six documents and oral evidence in support of his claim that the latrine had been used by him for a long time. The Petitioner produced oral evidence to the effect that the latrine was no part of the accommodation leased out to Respondent No. 2 nor was it used by him. The Respondent No. 1 by a detailed order accepted the claim of Respondent No. 2 and held that the latrine was an amenity enjoyed by him and its restoration for his use was necessary.

4. The order has been challenged on the grounds:

- (i) that the latrine was not an amenity;
- (ii) that the Respondent No. 2 had no right in respect of the latrine as it was not a part of the accommodation leased out to him; and
- (iii) that the order of Respondent no, 1 is not a reasoned order.

I find no substance in any of the grounds urged. An amenity u/s 7-D is a facility given and enjoyed by the occupant or occupants of a leased property. It cannot be equated to indispensable need. In *Corpus Juris Secundum*, Vol. 3 at p. 1044 it has been described as "such circumstances, in regard to situation, outlook, access to a watercourse, or the like, as enhance the pleasantness, or desirability of an estate for purposes of residence, or contribute to the pleasure and enjoyment of the occupants, rather than to their indispensable needs, restraining the owner from doing that with, and on his own property which but for a grant or covenant he might lawfully have done". A bath-room has been held to be an amenity in *Ullal Dinkar Rao v. M. Ratna Bai* AIR 1958 Mys. 77 and *N. Satyanathan v. K. Subramanyan* 1955 (3) MLJ 31. Further an amenity is a question of fact and the Respondent No. 1 has given a finding that the latrine in question was an amenity enjoyed by Respondent No. 2.

5. Section 7-D states that "no landlord shall without just or sufficient cause cut off or withhold any of the amenities enjoyed by the tenant". This provision does not require that the amenity enjoyed by a tenant should be a part of the accommodation occupied by him. It is possible that in certain cases a water-connection or a bath room or a gate or an electric connection which a tenant is allowed to use is not in any part of the accommodation leased out to him yet that

facility is made available to him by way of an amenity. The amenity though not existing in any part of the accommodation occupied by the tenant would still be an amenity enjoyed by him within the meaning of Section 7-D. A withholding of that amenity by the landlord would attract the provisions of Section 7-D and the landlord will be required to restore to the tenant under that provision. The contention that since the amenity was not a part of the leasehold property, the provisions of Section 7-D were inapplicable fails and is rejected.

6. The last ground urged by the learned Counsel for the Petitioner was that the impugned order is not a speaking order and does not contain the reasons for the ultimate decision. The order dt. 31-1-1972 has discussed the respective cases of the parties, dealt with the evidence produced on their behalf and then expressed the opinion that the latrine was an amenity enjoyed by the Respondent No. 2 and its restoration appeared necessary in the circumstances of the case. It is true that the order does not give details of the right of enjoyment and the length of enjoyment of the latrine by the Respondent No. 2 but the tenor of the order shows that the Respondent No. 1 was convinced that Respondent No. 2 had used this latrine for a sufficiently long time. He adverts to the award between Respondent No. 2 and Mahfooz Ali and culls out from the last passage of the award that Respondent No. 2 had been using the latrine. Further in view of the fact that he has discussed the cases of the parties and referred to the evidence produced by them it is clear that he had applied his mind to the question of the use of the latrine by Respondent No. 2 as an amenity. His final conclusion that the latrine was an amenity enjoyed by Respondent No. 2 and its restoration was necessary, clearly indicates that he was satisfied that the latrine was used by Respondent No. 2 as an amenity for a sufficiently long time and the Petitioner had wrongly deprived the Respondent No. 2 of its use. Detailed reasons for the final conclusion is not necessary in a quasi judicial order. All that has to be seen is whether the authority concerned has applied his mind to the respective cases of the parties and considered the evidence adduced by them. If the conclusion is reached after an application of mind to the facts of the case, then the order would not be open to challenge on the ground that detailed reasons for the conclusion had not been given. The tenor of the order has to be looked into and what has to be seen is whether the authority has reached a conclusion after applying his mind to the facts of the case. The impugned order is not open to objection on the ground that detailed reasons have not been given for upholding or rejecting the contentions raised by the parties. See *Raj Bahadur Lal v. Govt. of U.P.* 1972 ALJ 61. The impugned order in my opinion does not suffer from any error of law requiring interference Under Article 226 of the Constitution.

7. The petition fails and is dismissed with costs.