

(1973) 01 AHC CK 0014
In the Allahabad High Court
Case No : Second Appeal No. 432 of 1971

Afzal Ahmad Naqvi

APPELLANT

Vs

Dr. Kunj Behari and Others

RESPONDENT

Date of Decision : 05-01-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Constitution of India, 1950 — Article 226

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 16, 7F

Citation : AIR 1973 All 445

Hon'ble Judges : Omprakash Trivedi, J

Bench : Single Bench

Advocate : Badre Habib Siddiqui, for the Appellant; M.L. Trivedi and Ram Krishna Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Omprakash Trivedi, J.—This second appeal has been filed by Afzal Ahmad Naqvi and arises from the judgment and decree dated 24-9-1971 passed by the Civil Judge. Lucknow, setting aside the decree passed by Munsif North. Lucknow, in favour of the plaintiff-respondents.

2. The respondents filed a suit against the appellant in the Court of Munsif North. Lucknow, for a decree for ejectment and arrears of rent on the ground that the defendant was their tenant in a certain house of which they were landlords, that the respondents had moved an application for permission to file a suit for ejectment u/s 3 of the U. P. (Temporary) Control of Rent and Eviction Act (hereinafter called the Act) which permission was granted by the Rent Control and Eviction Officer. This permission was set aside by the Commissioner in revision; Whereupon the respondents filed a revision before the State Government by an order dated 5-8-1966 allowed the revision and granted to the respondents permission to file a suit for ejectment against the defendant. One of the grounds on which the suit was resisted in the trial Court was that the order

of the State Government passed u/s 7-F of the Act was without jurisdiction and ultra vires. It is not necessary for purposes of the present appeal to state the other pleas taken for the defendant. The Munsif found that the notice served on the defendant was invalid and upheld the plea that the order of the State Government passed u/s 7-F was no order in the eve of law as it did not give reasons. Upon these findings the suit for ejectment was dismissed and a decree was granted only for arrears of rent. The plaintiff appealed and the only point urged before the lower appellate Court was that the trial Court had no jurisdiction to go into the question of validity of the permission granted by the State Government u/s 7-F on account of the bar of Section 16 of the Act. The lower appellate Court disagreed with the Munsif and held that the order of the State Government u/s 7-F was a speaking order and that the Civil Court could not enter into the question of validity of the permission granted by the State Government. The appeal was allowed and the plaintiff was granted a decree for ejectment also. It is in these circumstances that the defendant comes to this Court in second appeal.

3. The submission of learned counsel for the appellant is that the order of the State Government passed u/s 7-F is not a speaking order; therefore, the order was passed in violation of the rule of natural justice and such an order being a nullity the bar of Section 16 of the Act did not apply and the jurisdiction of the Civil Court was not excluded, as erroneously held by the lower appellate Court. The order of the State Government passed u/s 7-F of the Act is Ext. 1 and reads as follows:

"With reference to his petition dated August 11/13. 1965 Dr. K.B. Ras-togi is informed that after a careful examination of the record of the case and due consideration of the version of the opposite party and also in view of the other facts relevant to the case, it appears expedient in the ends of justice that permission u/s .3 of the U. P. (Temporary) Control of Rent and Eviction Act. 1947 should be granted to the landlord/petitioner to file a suit for ejectment of the tenant-opposite party in the Civil Court.

Therefore, in exercise of the power . conferred u/s 7-F of the U. P. (Temporary Control of Rent and Eviction Act. 1947, the Governor is pleased to set aside the order dated 1-5-1965 passed by the Commissioner. Lucknow Division. Lucknow, in Revision No. 46 of 1964 and grant permission u/s 3 of the above Act to the landlord/ petitioner to file a suit for ejectment of the tenant-opposite party in the Civil Court."

I have heard arguments of Sri Badra Habib Siddiqui appearing for the appellant and Sri Ram Krishna Srivastava and Sri M.L. Trivedi for the respondents. I do not agree with the submission that this is not a speaking order, The order shows that it was passed after an examination of the record of the case and due consideration of the version of the opposite party and having regard to all other relevant facts pertaining to the case. It is not disputed that both the parties had an opportunity of hearing before this order was passed and, therefore, there is

no manner of doubt that the order was passed on a careful consideration of the entire material placed before the State Government and the contentions raised for the two sides. The order does give reasons for granting permission to the respondents although the reasons may not be detailed ones.

Under identical circumstances in the case of Mangal Prasad Vs. Sirdar Tara Singh, a Division Bench of this Court held that the order of the State Government was a speaking order. In the case of Ram Agyan Singh v. Murli Dhar Agarwal 1969 All LJ 1060 also the question arose whether an order of the State Government passed u/s 7-F without giving full reasons should be held to be valid. In para. 23 of the report it was observed that there is no reason to suppose that the High Court considered only part of the material which was before it and the omission of the State Government to refer in its judgment to all the materials on record does not vitiate the order.

4. Even if one were to hold that this is not a speaking order, as urged, it would not on that account become a nullity or an order void ab initio. Similar view was taken by a Bench of this Court in the case of Mangal Prasad Vs. Sirdar Tara Singh, . It was observed that learned counsel for the defendant-respondent contends that "if an order does not give reasons it is a nullity. In our opinion the submission is not correct. It may make the order irregular or defective, but the order cannot be a nullity so long as it has been passed by an authority which was competent to pass that order and is not passed against or in favour of a dead man. There is a difference in want of jurisdiction and the defect in the manner of exercise of jurisdiction. If orders are passed completely without jurisdiction they will be a nullity, but If there has been only a defect or irregularity in passing the order and the authority passing it had jurisdiction to do so it would not be a nullity". It cannot be doubted that the State Government had jurisdiction to pass an order u/s 7-F which is impugned in this appeal. Therefore, the order is not without jurisdiction and does not become a nullity merely because it is not supposed to give reasons. Indeed, there is force in the submission made on behalf of the respondents that it is not one of the requirements of the principles of natural justice that an order should be a speaking one or it should contain reasons. In the case of Mohd Ishaque v. State of Uttar Pradesh. 1969 All LJ 174 it was held that neither on principle nor on authority could it be said that the principles of natural justice required that the ultimate order must be a speaking one. I am in respectful agreement with this view.

In the case of Nandram Hunatram, Calcutta Vs. Union of India (UOI) and Another, the order of the State Government was not set aside by the Supreme Court although the order was a non-speaking one. The Supreme Court disposed of the matter with the observation that on the set of facts the reasons were so obvious that it was not necessary to state them. In this case also the view was taken that a quasi-judicial order which does not state reasons may be defective or improper or may also be invalid depending upon facts of each case and that such an order cannot be said to be void ab initio or a nullity in law. It would

suffer from a material irregularity and be voidable and not a void order. In the case of Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), an order of an administrative tribunal was held to be a non-speaking one but that was not considered by itself to be a ground for quashing it. The Supreme Court observed:

"An order of the administrative tribunal rejecting the revision application cannot be pronounced to be invalid on the sole ground that it does not give reasons for the rejection."

and in the same connection further observed that the broad proposition that the effect of Article 136 is that every order appealable under that Article must be a speaking order and the omission to give reasons for the decision is of itself a sufficient ground for quashing it, cannot be accepted as correct, and that orders of Courts and tribunals stand on the same footing for the purposes of an appeal under Article 136; an order of Court dismissing a revision application often gives no reasons, but this is not a sufficient ground for quashing it.

5. Learned counsel cited in arguments the case of Union of India (UOI) Vs. Tarachand Gupta and Bros, in support of the argument that an order passed in breach of principles of natural justice is a nullity. There is nothing in this report to show that this view which found expression in the judgment of Lord Reid in the case of Anisminic Ltd v. The Foreign Compensation Commission 1969 1 All ER 208 found approval of the Supreme Court. The question before the Supreme Court in this case was whether the jurisdiction of the Civil Court was barred or not when a decision or order passed by an officer of Customs under the Sea Customs Act. 1878 takes into consideration factors which the officer had no right to take into account in his determination. In connection with this question the Supreme Court cited a passage from the judgment of Lord Reid in 1969 1 All ER 208. In this passage Lord Reid had observed, while dealing with the circumstances when a tribunal can be said to act without jurisdiction, that there are many cases where although the tribunal had jurisdiction to enter into an enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity, and added that it may have given its decision in bad faith and it may have made a decision which it had no power to make or it may have failed in the course of the enquiry to comply with the requirements of natural justice. From para. 22 of the report it is clear that the Supreme Court did not endorse the view of Lord Reid so far as it went in holding that a decision failing to comply with the requirements of natural justice is a decision without jurisdiction. For in para. 22 of the report the Supreme Court held that where the statute confers finality on the decision of a tribunal and bars jurisdiction of the Civil Court such exclusion is subject to two exceptions, firstly, where the provisions of the particular statute have not been complied with, and secondly, where the tribunal has not acted in conformity with the fundamental principles of judicial procedure. The Supreme Court did not say that the jurisdiction of the Civil Court was not barred also where the decision Was in

breach of the principles of natural justice. There is, therefore, nothing in this ruling of the Supreme Court to support the argument that the Supreme Court held a decision in breach of the principles of natural justice to be nullity.

6. Apart from the above. Section 16 of the Act confers finality on an order passed by the State Government u/s 7-F of the Act and further bars the jurisdiction of the Civil Court by providing that no order made under this Act by the State Government or the District Magistrate shall be called in question in any Court. The correctness, propriety or legality of an order passed by the State Government u/s 7-F of the Act or by the District Magistrate u/s 3 cannot be called in question before the ordinary Civil Court, but there are only two exceptions to the exclusion of jurisdiction of the ordinary Civil Court indicated by Section 16 : The validity of an Order passed by the State Government Under Sec. 7-F or by the District Magistrate u/s 3 can be questioned before the ordinary Civil Court if the same was made without jurisdiction or in excess of jurisdiction in the sense of the order being passed with non-compliance of the provisions of the Act. In the case of Smt. Munni Devi and Another Vs. Gokal Chand and Others, the Supreme Court observed:

"It is only when the order is with jurisdiction that the order is not liable to be challenged in a Civil Court by virtue of Section 16 of the Act." In Union of India (UOI) Vs. Tarachand Gupta and Bros, in para. 22 the Supreme Court further observed:

"The principle thus is that exclusion of the jurisdiction of the Civil Courts is not to be readily inferred. Such exclusion, however, is inferred where the statute gives finality to the order of the tribunal on which it confers jurisdiction and provides for adequate remedy to do what the Courts would normally do in such a proceeding before it." and added:

"Even where a statute gives finality, such a provision does not exclude cases where the provisions of the particular statute have not been complied with or the tribunal has not acted in conformity with the fundamental principles of judicial procedure Accordingly a determination by a tribunal of a question other than the one which the statute directs it to decide would be a decision not under the provisions of the Act, and therefore, in excess of its (Jurisdiction,"

This is not a case where the State Government acted either without jurisdiction or in excess of jurisdiction in the sense that any provisions of the Act were not conformed to. Therefore, the ordinary jurisdiction of the Civil Court is barred by Section 16 of the Act and the learned lower appellate Court was right in holding that the validity of the order passed by the State Government u/s 7-F could not be questioned on the ground that it was a non-speaking order. In this connection learned counsel for the appellant submitted that the State Government as a quasi-judicial tribunal was bound to follow the fundamentals of judicial procedure, and not having done so because the order passed was a non-speaking order the case was one which was outside the bar created by Section

16 of the Act. This argument is without any merit. There is no obligation on a tribunal other than a Court of law to be bound by or to follow the ordinary judicial procedure which is prescribed for Courts of law. They are only bound to follow the procedure which may be prescribed by the statute under which they function or in the absence of any such statutory procedure to follow the rules of natural justice.

In the case of *Bharat Barrel and Drum Mfg. Co. Vs. L.K. Bose and Others*, in para. 9 of the report *Shelat. J.* quoted with approval observations of Lord *Parmoor* in *Local Government Board v. Arlidge* 1915 AC 120.

"Where, however the question of procedure is raised in a hearing, before some tribunal other than a Court of law, there is no obligation to adopt the regular forms of judicial procedure. It is sufficient that the case has been heard in a judicial spirit and in accordance with the principles of substantial justice."

7. Finally, an order of the State" Government passed u/s 7-F cannot be challenged before ordinary Civil Court on the ground of non-compliance with the rules of natural justice on account of the bar of Section 16 of the Act. On such a ground it can be challenged only before the High Court; in a writ petition under Article 226 of the Constitution.

In the case of *Ramji Das and Others Vs. Trilok Chand etc.*, the validity of an order passed by the State Government u/s 7-F was questioned on the ground that it was contrary to the rules of natural justice. This argument was rejected holding that the order had become final and was not liable to be challenged in a suit filed before the ordinary Civil Court. It was further observed:--

"It is true" that the "finality of the order declared by Section 3 (4) and Section 16 will not exclude the jurisdiction of the High Court in exercise of the jurisdiction under Article 226 of the Constitution to issue an appropriate writ quashing the order. But subject to interference by the High Court the decision must be deemed final and is not liable to be challenged in any collateral proceeding."

8. Upon all these reflections I come to the unhesitating conclusion that the Munsif was barred u/s 16 of the Act from looking into the validity of the order of the State Government u/s 7-F on the ground that it was a non-speaking order. The order had become final so far as the Civil Court was concerned. The view taken by the lower appellate Court on this point was, therefore, correct and this being the only point raised in the appeal the same must fail.

9. The appeal is accordingly dismissed with costs to the contesting respondents. The stay order stands vacated. The same shall be communicated to the Court concerned forthwith. The amount deposited by the appellant in the trial Court under orders of this Court dated 22-8-1972 shall be permitted to be withdrawn by the plaintiff-respondents on a proper application.