

(1972) 02 AHC CK 0017

In the Allahabad High Court

Case No : Sp. As. No's. 81, 96, 118, 119, 120, 121, 123, 128, 129, 141, 143, 144, 146, 152, 163, 164, 170, 171, 173, 183, 185 and 195 of 1971

Daulat Singh and Others

APPELLANT

Vs

Additional District Magistrate and Others

RESPONDENT

Date of Decision : 16-02-1972

Acts Referred:

Uttar Pradesh Government Premises (Rent Recovery and Eviction) Act, 1952 — Section 15A

Uttar Pradesh Industrial Housing Act, 1955 — Section 24A

Uttar Pradesh Public Land and Premises Laws (Amendment and Validation) Act, 1970 — Section 33

Citation : (1972) 42 AWR 297

Hon'ble Judges : S.N. Dwivedi, J;A.K. Kirty, J

Bench : Division Bench

Advocate : Jagdish Singh, for the Appellant;

Final Decision : Allowed

Judgement

S.N. Dwivedi, J.—These appeals have been filed against the judgment of a learned Single Judge. They proceed on similar facts and raise common questions of law. Accordingly we shall decide them by a single judgment.

2. The State Govt. has constructed certain houses in the city of Kanpur under the subsidised Industrial Housing Scheme for industrial workers. The Scheme is subsidised by the Central Govt. Some of the Appellants occupied some houses without any right, title or interest; some others had occupied other houses by virtue of an allotment made in their favour by the appropriate authority constituted under the U.P. Industrial Housing Act, 1955 but the allotment orders were subsequently cancelled; the remaining Appellants have been inducted in the houses by the second set of Appellants. Obviously none of them is entitled to continue in possession over the houses. Section 21 of the U.P. Industrial Housing Act, 1955 (hereinafter called the 1955 Act) provides for ejectment of persons who are "in unauthorised occupation of any premises." The Housing

Commissioner may take action u/s 21 for their eviction. An appeal from his order lies to the State Govt. u/s 22. A Full Bench of this Court held in *Ram Gopal Gupta v. Assistant Housing Commissioner* 1967 AWR 845 (2) : 1968 ALJ 339 that Section 21 of the Act is violative of Article 14 of the Constitution and is void. The Full Bench felt that as the Housing Commissioner may evict some trespassers u/s 21 and may prefer to go to the Civil Court for eviction of other similarly situated, the Act was discriminatory. The Full Bench rested its opinion on the decision of the Supreme Court in the *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, .

3. After the Full Bench decision, action for eviction is being taken against the Appellants under the UP Government Premises (Rent Recovery and Eviction) Act, 1952 (hereinafter called the 1952 Act). Section 7 of the 1952 Act provides for eviction of persons who are "in an unauthorised occupation of any Govt. premises." The authority authorised to initiate proceedings u/s 7 is the competent authority. The competent authority has issued notices u/s 7 to the Appellants.

4. The Appellants filed petitions Under Article 226 of the Constitution in this Court. They prayed for the quashing of the notices. They challenged the constitutionality of the 1952 Act. A learned Single Judge has dismissed their petitions.

5. The main ground on which petitions are dismissed is that the Appellants being rank trespassers, the Court should not exercise discretion to interpose relief in their favour.

6. It may be mentioned that the learned Single Judge has already held in another case that the 1952 Act is violative of Article 14 of the Constitution see *The Modern Constructions v. DM, Rampur*, CMWP No. 1128 of 1957, Dt. 17-9-1969. So at the time of the issue of impugned notices the 1952 Act as well as the 1955 Act stood declared unconstitutional by this Court. It is not necessary for the purposes of this case to reconsider whether both or either of them are constitutional. The UP Public Land and Premises Laws (Amendment and Validation) Act, 1970 (hereinafter called the Validating Act) renders that task unnecessary. Both the Acts were held unconstitutional because following the *Northern India Caterers*" case this Court thought that as the appropriate authority could take action under the Acts against certain persons and proceed against the similar situated persons in the Civil Court, they were discriminatory. The Validating Act has inserted Section 15-A in the 1952 Act and Section 24-A in the 1955 Act. Sections 15-A and 24-A provide that no suit or other proceeding for eviction from Govt. premises or house shall lie in a Civil Court. The said relief may be claimed only under the 1952 Act or the 1955 Act. The two new sections exclude the remedy of ejectment by a suit or other proceeding in a Civil Court. So the reason for which the 1952 Act and the 1955 Act were declared unconstitutional disappears now. The remedy under the two Acts is now exclusive.

7. There is no direct provision in the Validating Act for giving retrospective effect to Sections 115-A and 24-A. But Section 33 of the Validating Act clearly shows that the Legislature did intend that Section 15-A and Section 24-A will operate from the date of the commencement of the 1952 Act and the 1955 Act. Section provides that notwithstanding any judgment, decree or order of any Court any thing done or any action taken in regard to eviction or recovery of rent or damages or costs including any order made or proceedings taken therefor by any authority under the 1952 Act and 1955 Act shall be deemed to be done or taken under the said Acts as amended by the Validating Act and "be deemed to be and always to have been as validly done or taken as if the said amendments were always in force. (emphasis added). The expression "as if the said amendments were always in force" makes it evident that Sections 115-A and 24-A will be operative from the very moment of the birth of the 1952 and the 1955 Acts. As those sections are retrospective, the 1952 and 1955 Acts should not now be deemed to be obnoxious to Article 14-See The State of Mysore and Another Vs. D. Achiah Chetty, etc., . In view of the retrospective operation of Section 24-A the Full Bench decision in Ram Gopal Gupta's case (supra) will no longer hold the field. So also the Modern Construction.

8. It is urged that as the 1952 Act and the 1955 Act are both constitutional now, there still lingers discrimination. One unauthorised occupier may be evicted under the former Act while the other may be evicted under the latter Act. The procedures under the two Acts are radically different. In one sense the procedure under the latter Act, is more drastic than the procedure under the former Act. But this argument cannot succeed on account of Section 3(1) of the 1955 Act. Section 3(1) provides that the Act shall apply to houses constructed by the State Govt. for the occupation of industrial workers under the Industrial Housing Scheme subsidised by the Central Govt. Admittedly the houses which are "occupied by the Appellants are houses constructed by the State Govt. for the occupation of industrial workers under the Industrial Housing Scheme subsidised by the Central Govt. So action against the Appellants can be taken only under the 1955 Act. They cannot be evicted under the 1952 Act.

9. Notices have been issued u/s 7 of the 1952 Act against the Appellants. We have already said that the Appellants cannot be evicted under the 1952 Act. Accordingly notices are invalid. It will no doubt be open now to the appropriate authority to proceed against them under the 1955 Act.

10. In view of the foregoing discussion we allow the appeals and the writ petitions filed by the Appellants. The notices issued u/s 7 of the 1952 Act against them are quashed.