

(1972) 09 AHC CK 0046

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2797 of 1971

Dharamvir Kashyap and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-09-1972

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : AIR 1973 All 272

Hon'ble Judges : H.N. Seth, J

Bench : Single Bench

Advocate : L.P. Naithani, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Seth, J.—By this petition under Article 226 of the Constitution, the petitioners pray that, an order dated 12th of February, 1971, passed by the State Government u/s 7-F of the U. P. (Temporary) Control of Rent and Eviction Act, 1947 be quashed.

2. Petitioner No. 1 Dharamvir Kashyap is the son of one Sheer Singh Kashyap. Petitioner No. 3 Udain Kashyap is the son of Petitioner No. 1 and grandson of Sheer Singh Kashyap, Sheer Singh and Tara Chand (Petitioner No. 2) were the tenants in premises Nos. 31 and 30 of Mohalla Gudaryan, Shamli Road, Muzaffarnagar. Accommodation in premises No. 31 consists of a shop facing south on the ground floor whereas that in premises No. 30 consists of a room, courtyard and a staircase on the first floor. Respondent No. 4 Sumat Prasad is the landlord of the two accommodations. He moved an application before the Rent Control and Eviction Officer, Muzaffarnagar seeking permission to file suits for ejectment of Sheer Sinsh Kashyap and Tara Chand. The permission was sought mainly on the ground that the applicant's income had been dwindling because of abolition of "Zamindari" and discontinuation of his practice as an advocate since the year 1957 when he was returned to Lok Sabha. His,

expenditure increased suddenly when his only daughter lost her husband on the 16th July, 1968 and the burden of supporting her and her five minor daughters fell upon the applicant. In these circumstances it became necessary for the applicant to augment his income so that he may be able to maintain himself, his daughter and his grand children. Accordingly he entered into a partnership with one Sri Kailash Chand Jain for running wholesale cloth business in the disputed premises. The accommodation on the ground floor was to be used as a shop whereas that on the first floor was to be used as a godown. It was alleged that petitioner No. 2 Tara Chand had constructed a house and some shops at Bhopa Road, Muzaffarnagar and he could easily shift his business to that place.

3. The application was contested by Sheer Singh Kashyap and Tara Chand. They denied the pressing need as stated by the landlord and contended that his case that he had entered into a partnership with Kailash Chand Jain, for running a business in the premises did not appear to be correct. Both of them had been running their business of selling "Ayurvedic" medicines in the two accommodations for over 30 years. Further, Sheer Singh was practising Ayurvedic as well in the accommodation in his possession. On the one hand, if ejected the two tenants would be completely ruined, on the other, the landlord could easily augment his income by resuming his practice as an advocate or by investing money in the well-settled business of Sri Kailash Chand and his son which was being run at a different place.

4. After considering the cases of both parties, Rent Control and Eviction Officer, Muzaffarnagar came to the conclusion that the case set out by the landlord is correct and that he genuinely needed the two accommodations for running a partnership business. He also found that in case the two tenants were directed to be ejected, their interests would undoubtedly suffer; but considering the respective needs of both the parties, this was case where interest of the two tenants could be sacrificed in the interest of the landlord. Accordingly he permitted the landlord to file a suit for ejectment of Sheer Singh and Tara Chand.

5. Both Sheer Singh and Tara Chand went, up in revision before the Commissioner, Meerut Division. While allowing the two revision applications the learned Commissioner at one place observed as follows.-

"Learned counsel for the revisionist has argued before me that even though one had sympathy with the landlord in his present difficult situation there was no justification to evict the two revisionists from the disputed premises."

This observation shows that it was not disputed that in the circumstances, the landlord stood in need of augmenting his income and that he was in fact, in a difficult situation. The Commissioner, however, felt doubtful whether Sri Kailash Chand Jain with whom the partnership agreement had been entered into, would be able to run a cloth business in the disputed premises. He visualised the possibility that the partnership may not be implemented at all in so far as starting the cloth business in the disputed premises was concerned. According to

him the landlord, who was in possession of liquid assets could invest his money for expansion of the existing business of Shri Kailash Chand and supplement his income by resuming practice at the Bar. In these circumstances, he found that comparatively the needs of the two tenants, who had been doing business in Ayurvedic medicines for over 30 years were greater than that of the landlord. In the result, he allowed the revision and set aside the order of the Rent Control and Eviction Officer, permitting the landlord to file a suit for the ejectment of Sheer Singh and Tara Chand.

6. The landlord, Sri Sumat Prasad, then filed two revisions before the State Government. While these revisions were pending before the State Government, Sheer Singh died on 15th of December, 1970. On 19th of December, 1970, Sri Sumat Prasad made an application to the State Government reading :--

"Sir,

In respect of the above representation it is further submitted that Sri Sheer Singh Kashyap, tenant of the aforesaid premises has died on 15-12-1970. His only heir is one son Sri Dharamvir Kashyap who is in Government service and is posted at Lucknow as Executive Engineer. P. W. D., at 53-C. Clay Square, Lucknow. The tenant's need in the circumstances has vanished. Thus due to the need of the landlord his prayer be kindly granted against Sri Dharamvir Kashyap."

The State Government, by Its order dated 11th January, 1971 directed the Rent Control and Eviction Officer to serve a copy of the application dated 19th of December, 1970 received from the landlord, on Shri Dharamvir Kashyap heir of Shri Sheer Singh. The Rent Control and Eviction Officer was further required to obtain the version of Sri Dharamvir Kashyap (Petitioner), and to forward the same to the State Government. Thereafter, Shri Dharamvir Kashyap wrote to the State Government that his father Sheer Singh died on the 13th December, 1970. There is no provision in the U. P. (Temporary) Control of Rent and Eviction Act authorising substitution of heir in place of deceased tenant at the stage of Section 7-F proceedings. The application for permission to file a suit for tenants' ejectment could not be pursued after his death. He also emphasised his need for the accommodation by stating that the business in Ayurvedic medicine was being run in the premises by the assistants employed by his late father. After his retirement he intended to settle permanently at Muzaffarnagar and in that event the premises were to be useful to him either for running the same business or as consulting premises.

7. The State Government came to the conclusion that the need of the landlord is real and genuine. Petitioner No. 2 Tara Chand had his own house and some newly constructed shops. He could get those shops vacated in accordance with his needs. Shri Sheer Singh was dead and his only heir Shri Dharamvir Kashyap was employed in the P. W. D. as an Executive Engineer. After comparing the needs of the parties it came to the conclusion that this is not such a case where in order to protect the interest of the tenants the interests of the landlord should

be verified. It accordingly, set aside the order passed by the Commissioner. Meerut Division and granted permission to the landlord for filing suits for ejectment of the two tenants.

8. Feeling aggrieved by the decision of the State Government Shri Dharamvir Kashyap, his son Udain Kashvap and Tara Chand Sharma have come up before this Court.

9. Sri L. P. Naithani, appearing for the petitioners contended that the order passed by the State Government, without substituting Dharamvir Kashyap in place of the deceased Sheer Singh, is invalid. According to him so long as Dharamvir Kashyap was not brought on record, he was not a party before the State Government and no permission for filing a suit for his ejectment could be passed. He also contended that the order was bad Inasmuch as the State Government, while considering the revision application, did not give any opportunity to Shri Dharamvir Kashyap for meeting the case of the landlord.

10. I am unable to accept any of these submissions. There is no provision in the U. P. (Temporary) Control of Rent and Eviction Act, like that, contained in Order 22 of the Code of Civil Procedure, which provides that on the death of a party to proceedings in revision pending before the State Government, those proceedings will abate and that a decision cannot be taken without formally bringing the heir and legal representative of the deceased on the record. Only thing which the principles of natural justice require in such circumstances is that the State Government should not decide the matter without affording an opportunity to the heir and legal representative of the deceased for being heard and to have his say in the matter. In case. Shri Dharamvir has been given an opportunity to have his say in opposition to the revision application filed by the landlord, the order passed against him will not be vitiated on the ground that his name had not been formally brought on record as heir of Sheer Singh.

11. I, therefore, proceed to consider whether, in fact, an opportunity was afforded to Shri Dharamvir Kashyap to have his say in the matter. As stated earlier, after the death of Shri Sheer Singh the landlord moved an application before the State Government bringing this fact to its notice. In that application it was stated that Dharamvir Kashyap, who was the only heir of Shri Sheer Singh, was in Government service and was posted at Lucknow as Executive Engineer in Public Works Department, In the circumstances, the needs of the tenant had disappeared. The State Government directed the Rent Control and Eviction Officer to serve a copy of that application and to obtain the version of Sri Dharamvir Kashyap in the respect. Shri Dharamvir Kashyap was thus given an opportunity to state his case as to how his needs for the accommodation in dispute continued and why the revision application filed by the landlord be not allowed. The petitioner Sri Dharamvir Kashvap availed the opportunity. He filed his objection raising a preliminary objection and also stating facts which according to him showed that in the circumstances of the case, permission for filing a suit for his ejectment should not be granted. According to him the

application for permission to file a suit for the ejectment of Sheer Singh became in-fructuous after his death. He also explained his need for the accommodation by saying that the business left by his father was being run through the assistants employed by his late father and that after his retirement he intends to settle permanently at Muzaffarnagar and then the premises shall be useful either for running the business or as consulting premises. In the circumstances, it cannot be said that the petitioner did not have full opportunity of placing his case before the State Government, and the order passed by the State Government is vitiated on that account.

12. Shri Naithani then argued that it was obligatory upon the State Government to consider the need of the petitioner and to compare the same with that of the landlord before granting permission for filing a suit for his ejectment. This consideration of the comparative need should have done on the basis of relevant material. He contends that in this case the State Government has granted permission to the landlord merely on the ground that the petitioner at that time was living at Lucknow. This, according to him, was wholly irrelevant consideration. What the State Government should have considered was about Ms present need for running the business through the assistants employed by his late father and his need to run the same after be retired from service. The representation made by Shri Dharamvir Kashyop was before the State Government, wherein it was admitted that Shri Dharemvir Kashyap was employed as an Executive Engineer in the Public Works Department. It does not appear that the State Government disbelieved Shri Dharamvir"s case that the business left by his father was being run through the assistants employed by his late father and that after his retirement the petitioner intended to settle permanently at Muzaffarnagar and that in such a case the premises could be useful either for running the same business or as consulting premises. The State Government however, emphasised the present financial difficulties of landlord and his pressing needs and also the fact that Shri Dharamvir Kashyap was employed as an Executive Engineer in the P. W. D., Lucknow, It is obvious that the State Government was of opinion that while on the one hand there was an immediate need of the landlord to augment his income for supporting himself, his daughter, and his grand children on the other hand. Shri Dharamvir Kashyap was gainfully employed as an Executive Engineer in the P. W. D. at Lucknow, and therefore comparing the needs set out by both the parties it was not such a case where the needs of the landlord should be ignored. I am not prepared to accept the argument that the State Government has granted permission merely because the petitioner Shri Dharamvir is living at Lucknow. The State Government has fully compared the needs of the petitioner and the landlord. Once the needs of the landlord and the tenants have been compared, it is not for this Court to go into the question and to form its own opinion whether in the circumstances it considers the needs of the tenants to be more pressing. In the circumstances the order passed by the State Government is not vitiated on the ground that it has not considered the needs of the petitioner or that it arrived at its conclusion on

the basis of irrelevant material.

13. So far as petitioner Tara Chand is concerned, the State Government has pointed out that he can shift his business in the new shops constructed by him which he could get vacated. In the circumstances, it would not be in the interest of justice to sacrifice the needs of the landlord in order to enable him to continue his business in the premises in dispute. There is thus no defect in the procedure adopted by the State Government in dealing with the cases of both the petitioners, namely, Dharamvir Kashyap and Tara Chand.

14. In the result I am of opinion that the petitioners have failed to make out any case for interfering with the order dated 12th February, 1971, passed by the State Government. The petition, accordingly fails and is rejected with costs.