

(1979) 11 AHC CK 0010

In the Allahabad High Court

Case No : Civil Msic. Writ Petition No. 157 of 1978

Imam Bux Niyazi

APPELLANT

Vs

The Rent Control and Eviction Officer and Another

RESPONDENT

Date of Decision : 05-11-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 14, 37

Citation : (1980) AWC 607

Hon'ble Judges : Murlidhar, J

Bench : Single Bench

Advocate : K.C. Srivastava, for the Appellant; R.R.K. Trivedi, V.K.S. Chaudhary and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Murlidhar, J.—This is a landlord's petition under Article 226 of Constitution for a writ of certiorari quashing the order, dated 28-5-77 passed by the Rent Control and Eviction Officer against which order a revision was dismissed by the District Judge on 2-9-1977.

2. The brief relevant facts are these: The Petitioner is a landlord of the building in question. Admittedly, Respondent No. 2 Shankar Lal is a tenant in these premises at Rs. 80/- per month since 1966. It is common ground that Respondent No. 2 is in possession of a shop. The controversy is about a gallery room and underground cellar. According to the landlord these were not part of Respondent's tenancy premises and had never been in his occupation till he took forcible possession on 3-4-76 about which a police report had been lodged. The tenant appears to have filed a civil suit and obtained a temporary injunction. On 1-6-76 he also applied to the Rent Control and Eviction Officer for allotment of the premises to him. The landlord filed an objection. The Rent Control and Eviction Officer after considering the evidence on behalf of the parties held that

the Respondent was in possession of the shop and the disputed premises as a tenant. Thereafter, he posed the question whether the premises should be allotted or the Respondents' possession be regularised. He found that the shop and the premises were not vacant and, therefore, it was not proper to consider allotment. Further holding that the case was covered by Section 14 Act No. XIII of 1972, the Rent Control and Eviction Officer passed an order declaring that the occupation of a shop and other premises by the Respondent No. 2 stood regularised u/s 14. In revision the District Judge noted that no revision lay against a declaration that possession stood regularised u/s 14. The District Judge further observed that the Respondent's prayer for allotment having been virtually rejected no revision lay by the Petitioner from the order as an order passed on application of allotment. The District Judge also observed that the Petitioner has no reason to be aggrieved by the said order because this order was not immune from challenge u/s 37 of the Act and could be reagitated in the civil court where a suit was already pending.

3. By this writ petition the Petitioner has challenged the order of regularisation of tenancy by the Rent Control and Eviction Officer. He concedes that a revision did not lie and, therefore, the District Judge rightly dismissed the revision. The Learned Counsel stated that the Petitioner's apprehension is that this order of regularisation may prejudice the Petitioner in the civil dispute with the Respondent because the Respondent will rely on this order and claim immunity from challenge for it u/s 37 of the Act. It is urged that since the law does not contemplate passing of any order for regularisation u/s 14, the Rent Control and Eviction Officer should have stopped at rejecting the prayer for allotment and not gone on to specifically pass an order of regularisation. The order is said to be illegal and liable to be struck down.

4. As held by this Court in *Bhagelu Ram Tiwart v. Judge Small Cause Court, Allahabad* 1977 ARC 75 and *Mirza Samiullah Baig Vs. District Magistrate and Others*, the statute does not contemplate any order of regularisation u/s 14 which is a deeming provision regularising an illegal occupation which but for this provision might be unauthorised. Because of this any finding that the occupation has been regularised u/s 14 does not amount to an order in exercise of any power by or under the Act which orders have been granted immunity from challenge in any court by Section 37. The legal consequence is that any finding or declaration of regularisation u/s 14 made by the District Magistrate or authorities under the Act would be binding on those authorities only and would not bind the civil court should the matter come before it. The civil court would not be affected by such an order or finding one way or the other and would arrive at its own determination regarding applicability of Section 14 on the evidence before it. Therefore, the impugned order in this case will not prejudice the Petitioner in his civil litigation with Respondent No. 2. Its only effect is that the District Magistrate will for the purposes of proceedings under the Act not treat the possession as unauthorised.

5. In connection with exercise of various powers by the authorities under the Act question may often arise as to whether possession of a person over certain accommodation is authorised or unauthorised because either kind of possession would give rise to different consequences. The authorities have to answer the question in the light of and after taking note of Section 14 and where such a decision is called for the order in the sense of decision or finding cannot be said to be without jurisdiction. Some confusion gets created by the different senses in which the word "order" is used. In the generally used wider sense it comprises every recorded decision including the reasons and findings. In the relevant narrow sense it means order passed in exercise of powers conferred by the Statute in the manner dictated by the Statute from which definite consequences follow. Such orders under Act XIII of 1972 are protected from challenge in court u/s 37 of the Act. Orders in the wider sense like an incidental finding of regularisation of tenancy are not so protected and do not preempt or oust the jurisdiction of the civil court to arrive at its own decision on the same point. But these orders are not without jurisdiction. They would be so only if there is no authority or occasion for giving such a decision. In the present case when an application for allotment of the accommodation has been made the Rent Control & Eviction Officer had to decide whether it was vacant and for that purpose was entitled to go into the question whether possession of the Respondent was authorised or unauthorised. Therefore, the order declaring such possession cannot be said to be without jurisdiction. Only as earlier noted, this is not an order protected u/s 37.

6. There is also another angle for regarding the apprehension of the Petitioner from the order in question as baseless. In substance the order regularises the tenancy which is really not disputed, the only dispute being what is comprised in it. The Rent: Control & Eviction Officer has no jurisdiction to decide as to whether a particular portion was comprised in the admitted tenancy or not. Even if the regularisation of admitted tenancy be taken to be valid and binding the part regarding the extent of premises covered by the admitted tenancy at Rs. 80/- per month cannot be so and must be taken to be a tentative finding of the R.O.E.O. for his own purposes which will not be binding on civil court. But even here it is not possible to go to the extent of saying that the Rent Control & Eviction Officer could not go into and record a finding about this matter as an incidental question. There is, therefore, no case made out for interference with the impugned order.

7. The petition fails and is hereby dismissed. There shall be no order as to costs.