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**(1955) 09 AHC CK 0060**

**In the Allahabad High Court**

**Case No : Civil Miscellaneous Writ No. 417 of 1955**

K.G. Nene

APPELLANT

Vs

The Rent Control and Eviction Officer and Others

RESPONDENT

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**Date of Decision : 19-09-1955**

**Acts Referred:**

Constitution of India, 1950 — Article 226

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 2(d), 3

**Citation : (1955) 25 AWR 569**

**Hon'ble Judges : Mehrotra, J**

**Bench : Single Bench**

**Advocate : S.C. Khare, for the Appellant;**

**Final Decision : Allowed**

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## **Judgement**

Mehrotra, J.—This is an application under Article 226 of the Constitution praying that an order passed by the Rent Control and Eviction Officer granting permission to the opposite party No. 4 to file a suit for ejectment against the applicant be quashed.

2. The applicant is the tenant of the whole of the ground floor of house No. 11/327, Southerganj, Kanpur and has been living there as a tenant since the beginning of 1943. Mrs. Chheda Lal was the owner of the said house from 1943 to 1945, when she sold the house to one Ram Chandra. On the 17th August, 1952, the said Ram Chandra sold the house to one Sri Krishna Lal who is arrayed as opposite party to the present petition. Sri Krishna Lal is living in the same house in the first, second and third floors. On the 26th August, 1952, Sri Krishna Lal made an application to the Rent Control and Eviction Officer, Kanpur for permission to eject the applicant u/s 3 of the U.P. Control of Rent and Eviction Act. This application was rejected by the Rent Control and Eviction Officer after hearing the parties by his order dated 1st April, 1953. The opposite party, thereupon, applied to the District Magistrate, Kanpur for the cancellation of the order of Rent Control and Eviction Officer refusing the permission. The District

Magistrate heard both the parties and after considering the objections raised by the applicant, on the 3rd of May, 1953, passed an order cancelling the previous order of the Rent Control and Eviction Officer refusing to grant the permission to eject the applicant and directed the Rent Control and Eviction Officer to grant the opposite party permission to eject the applicant. After this order had been passed by the District Magistrate on the 3rd May, 1953, the Rent Control and Eviction Officer by his order dated 11th May, 1953 granted the opposite party Sri Krishna Lal permission to eject the applicant. A revision was filed by the applicant against the second order of the Rent Control and Eviction Officer dated 11th May, 1953 before the Additional Commissioner, Allahabad. The applicant was not present on the date of hearing and the revision was, therefore, rejected for default. The applicant then applied for the restoration of the case which was also rejected on the ground that there was no provision in the Rent Control and Eviction Act under which the Additional Commissioner had power to restore a revision dismissed for default. Representation was then made to the State Government but the Government rejected this representation. After obtaining the permission, the opposite party filed a suit for the ejectment of the applicant which is pending in the court of Munsif City, Kanpur.

3. On these facts the present petition has been filed.

4. Notices were issued to the opposite parties and a counter-affidavit has been filed on behalf of the landlord Sri Krishna Lal who is arrayed as opposite party No. 4 to this petition. In the counter-affidavit it is asserted that in July, 1953, a suit had been filed for the ejectment of the applicant in the court of Munsif City, Kanpur which is still pending. It is admitted that an application was made to the District Magistrate by the apposite-party praying that the order of the Rent Control and Eviction Officer refusing to grant permission be cancelled. It is further asserted that the applicant applied that the District Magistrate's order of 3rd May, 1953 was illegal and invalid. It is then asserted in the counter-affidavit that on the date when the revision was dismissed for default, the applicant was not ill and the revision was rightly dismissed by the Additional Commissioner because the applicant deliberately absented himself presumably on the ground that the deponent having already filed the suit on the basis of the permission granted to him, its subsequent cancellation by the Commissioner would be of no consequence. The main contention of the applicant is that under the provisions of the Control of Rent and Eviction Act, the District Magistrate had no power to pass an order cancelling the order passed by the Rent Control and Eviction Officer refusing permission to the landlord to file a suit against the applicant and lie had further no power under any of the provisions of the Control of Rent and Eviction Act to grant permission and the order of the Rent Control and Eviction Officer dated 11th May, 1953 Was passed as a result of the order passed by the District Magistrate on the 3rd of May, 1953 which was without jurisdiction and should be quashed. Raliance has been placed on the case of Mahabir Prasad v. The District Magistrate of Kanpnr 1955 A.W.R. (H.C.) 384. In that case a certain allotment order was cancelled by the District Magistrate and acting upon the order of the

District Magistrate, the Rent Control and Eviction Officer had passed a subsequent order and it was held by this Court that the Rent Control and Eviction officer cannot lawfully cancel his own order when that cancellation is not the result of the exercise of his own discretion but is brought about in pursuance of an order of a superior authority and such an order is liable to be set aside. The counsel for the opposite parties has strenuously urged that the facts of the case relied upon are distinguishable from the present case and in the present case, at any rate, this Court in exercise of its powers under Article 226 of the Constitution, cannot quash the order of the Rent Control and Eviction officer. The first ground urged by the opposite parties, in reply to the contention of the applicant, is that in the present case the only prayer which the applicant has made is for the issue of a writ of certiorari quashing the order dated 11th May, 1953 giving permission to the opposite party No. 4 to file a suit for ejectment against the applicant. An order granting or refusing permission u/s 3 is an administrative order and no writ of certiorari lies against an administrative order. The principle of law is well-settled both by the numerous cases of this Court as well as that of the Supreme Court that the two conditions are necessary for the grant of a writ of certiorari firstly there must be a tribunal acting judicially or in a quasi-judicial manner. The Tribunal has not only to act judicially but there must be a duty cast upon such tribunal to act judicially and only in such cases a tribunal can be regarded as judicial or quasi judicial tribunal. The second condition necessary for the grant of a writ of certiorari is that the tribunal must have acted without jurisdiction or must have committed an error of procedure or any other error apparent on the face of the record. The powers, however, under Article 226 of the Constitution are much wider and this Court, in the exercise of its powers under Article 226 of the Constitution, can issue any directions or orders to the subordinate courts. Invoking the jurisdiction of this Court under Article 226 of the Constitution, the primary relief sought is for the quashing of an order passed by the Rent Control and Eviction Officer. It cannot, therefore, be said that the present petition can be thrown out only on the ground that, while asking for a relief quashing the order, the Petitioner has further added that an order quashing the order of the Rent Control and Eviction Officer be issued by issuing a writ of certiorari. In my opinion, therefore, there is no force in this objection raised by the opposite-parties.

5. The next contention of the applicant is that in the present case the order by which the power was delegated to the Rent Control and Eviction Officer by the District Magistrate has not been filed by the opposite-parties. If the order had been filed and was present before the Court, it may have been clear as to what reservations were made, if any, by the District Magistrate in the order. In effect, the contention of the applicant is that the District Magistrate may, while delegating his power, reserve to himself the right of cancelling an order passed by the subordinate authorities in the exercise of his delegated power. Sub-section (d) of Section 2 of the Control of Rent and Eviction Act defines the District Magistrate as follows:

District Magistrate includes an officer authorised by the District Magistrate to perform any of his functions under this Act.

6. One of the functions which the District Magistrate has to perform under this Act is to grant or to refuse permission u/s 3 and that any of the officers who has been authorised by the District Magistrate to perform any of the functions of the District Magistrate has got the power to perform any such act. This definition clearly indicates that the District Magistrate has got power to delegate his authority to perform any specific function assigned to him under the Act to any officer subordinate to him. It does not contemplate the delegation of a power in the manner suggested by the opposite parties namely, that he can delegate his power to the Rent Control and Eviction Officer to grant or refuse permission u/s 3 but can further make a restriction that an order passed by the Rent Control and Eviction Officer shall be subject to the revision of the District Magistrate. I do not, therefore, see that there is any force in this objection of the opposite parties. The contention of the opposite-parties is not that the District Magistrate had not delegated his powers at all to the Rent Control and Eviction Officer to exercise powers u/s 3. If that was the contention, obviously the result would follow that the Rent Control and Eviction Officer had no power to grant permission to the opposite party No. 4 and consequently the opposite-party had only advanced this limited argument that in the absence of an order of delegation, it cannot be definitely said that the District Magistrate had not reserved to himself the power to scrutinise the orders passed by the Rent Control and Eviction Officer and to cancel or to confirm it. There is another aspect of the matter. No power of revision or appeal against the order of the Rent Control and Eviction Officer has been given to the District Magistrate under the act and if the District Magistrate cancels an order passed by a subordinate officer or issues specific directions to him, it would be in effect exercising powers of an appellate and revisional court. Such an inconsistency could not have been anticipated by the Legislature. Having not provided for any appeal to the District Magistrate against an order of the Rent Control and Eviction Officer, and having given them concurrent jurisdiction in the matter, it may be inconsistent to hold that by another process the same power had been given to the District Magistrate. The other contention of the opposite parties is that it cannot be argued that the order passed by the District Magistrate cancelling the order of the Rent Control and Eviction Officer passed earlier was an illegal order. At the time when the order was passed by the District Magistrate, there was a clear authority of this Court under which the District Magistrate had power to issue such a direction and, therefore, it cannot be said that the order passed by the District Magistrate on the 3rd May, 1953 was without jurisdiction. Reference in this connection has been made to case of Mannu Lal v. Chakradhar Hans 1952 A.W.R. (H.C.) 279. Particulars reference was made to the following observations made by the learned Chief Justice in that case:

Our finding that the power was an administrative power also answers the third question that an opportunity should have been given to the Plaintiff to show

cause before the previous order passed by the Rent Control Officer could be cancelled. An administrative or executive power has to be exercised always subject to the control of the superior officers and we see no objection to the second order having been passed at the discretions of the District Magistrate.

7. This case has been considered in a subsequent case which I have already referred to earlier and it is explained in the following terms.

What the learned Chief Justice meant by the above quoted remark was that the District Magistrate could suggest new facts and new aspects of the case to the Rent Control and Eviction Officer and could ask him to reconsider the matter in the light of those suggestions. Had it been his Lordship's intention to say that the District Magistrate could substitute his own discretion for the discretion of the Rent Control and Eviction Officer, a more explicit language would have been used.

8. It is, therefore, clear that the District Magistrate, in exercise of his administrative control, can always suggest to his subordinate officers to reconsider a matter but he has got no power to cancel the previous order passed by the Rent Control and Eviction Officer and to direct him to issue a fresh order in substitution of the order passed by the subordinate authority. In that event it would be controlling the discretion of the subordinate officer to the extent of substituting his own discretion in place of that of the subordinate officer. In the case of Commissioner of Police, Bombay v. Gordhan Das Bhanji 1952 S.R. 135, it has been held by the Supreme Court that when a discretion is granted to an authority, the authority has to apply his own mind to the question before him and if he acts under the discretion of a superior officer, it cannot be said that he exercised his own discretion in the matter. In that case power was given under a certain Act to grant or refuse a cinema licence to the Commissioner of Police of Bombay. The Government cancelled the license granted by the Commissioner and acting upon the order passed by the State Government, the Commissioner communicated the decision of the Government to the party concerned, Two questions were urged in that case. Firstly, it was contended that the communication of the order of the State Government by the Commissioner to the licensee does not itself amount to the passing of the order by the Commissioner and secondly, it was contended that even if the order in that particular case was regarded as an order passed by the Commissioner himself the order was invalid as it was an order at the instance of the Government. The point, which has been strenuously urged by the opposite-parties is that it does not appear on the face of the order of the 11th May, 1953 that it was an order passed under the direction of the District Magistrate. The order on the face of it purports to be one u/s 3 of the U.P. Control of Rent and Eviction Act and as such the order is an administrative order. Unless there is any thing to indicate on the face of the order itself which would suggest that the order was passed under the direction of the District Magistrate, it cannot be set aside on the ground that it is without jurisdiction. The contention, in substance, of the opposite-parties is that on the face of it, the order was within the competence of the Rent Control and Eviction

Officer. It may be that the Rent Control and Eviction Officer did not apply his independent mind to the circumstances of the case and it may be regarded as a result of the direction issued by the District Magistrate only to this extent that the grounds which were taken into consideration by the District Magistrate in his order were considered afresh by the Rent Control and Eviction Officer and he after the consideration of these circumstances independently applied his mind to the question and passed a fresh order u/s 3. The further contention is that the burden of proof was on the applicant and unless the applicant positively showed as a fact that the order passed by the Rent Control and Eviction Officer on the 11th May, 1953 was as a result of the direction issued by the District Magistrate, it cannot be set aside. The order no doubt on the face of it purports to be an order u/s 3. The question whether this order was passed as a result of the direction issued to that effect by the District Magistrate will depend not only on the order itself but on the surrounding circumstances. We have got before us the order pas-ed by the District Magistrate. The order of the District Magistrate does not throw out any suggestion to the Rent Control and Eviction Officer to reconsider the matter. On the contrary, the order definitely, on the application made by the opposite party, purports to cancel the order passed by the Rent Control and Eviction Officer earlier and further gives a clear direction to the Rent Control and Eviction Officer to grant the permission to the applicant (opposite-party No. 4). There is no mention in the order itself that the Rent Control and Eviction Officer considered the circumstances mentioned in the order of the District Magistrate and on the consideration of those circumstances, passed a fresh order u/s 3. Inspite of notice to the opposite parties, the Rent Control and Eviction Officer has not come forward to file any affidavit suggesting that after the order of the District Magistrate, he applied his mind afresh to the question and along with other circumstances considered the circumstances mentioned in the order of the District Magistrate. In these circumstances no inference can be drawn except that the order of the Rent Control and Eviction Officer dated 11th May, 1953 was under the direction issued by the District Magistrate in his order dated 3rd May, 1953. An argument has been advanced by the opposite parties that the allegation in the petition itself does not make out an assertion of the fact that the order of Nth May, 1953 was passed in view of the direction issued by the District Magistrate. It is contended that the omission of the fact in the order that it was passed on an independent examination of the circumstances will not necessarily establish the fact that the order was passed in view of the direction issued by the District Magistrate inasmuch as the order u/s 3 being an administrative order, no reasons need be given in the order itself. It is true that an order u/s 3 is an administrative order but the question whether in the circumstances of the case, the order of the 11th May, 1953 was passed in view of the direction issued by the District Magistrate is a question which can be decided on the circumstances of a particular case and one of the circumstances, though inconclusive which can be taken into consideration is the omission of the Rent Control and Eviction Officer to clearly state in the order that he has considered the circumstances independently and has passed a fresh order u/s 3. As regards

the failure of the Petitioner to make allegations in clear terms, the allegations are to be found in paragraph 9 of the affidavit filed in support of the petition. Paragraph 9 reads as follows:

That as a result of the above illegal order of the District Magistrate, the Rent Control and Eviction Officer granted Sri Krishna Lal permission to eject the applicant....

9. These words clearly amount to an assertion of the fact that the order passed by the Rent Control and Eviction Officer was in view of the direction issued by the District Magistrate. A number of other grounds were urged by the opposite-parties to the effect that in the circumstances of the present case, this Court cannot exercise its powers under Article 226 of the Constitution in favour of the Petitioner. Firstly, it is contended that a suit has already been filed and the decision of this Court cannot affect the suit which has already been filed and consequently this Court will not grant an ineffective writ. Reliance has been placed on the case of *Lala Ram Rakshpal v. Surendra Nath* (1955) A.L.J., 372. That was a case in which permission had been granted to a landlord to file a suit and in pursuance of the said permission, a suit had been filed. Subsequently the permission was withdrawn by the District Magistrate and it was urged by the Defendant that the suit must fail on account of the subsequent withdrawal of the permission. It was held by this Court that the order granting permission was an administrative order and it was always open to the authority to withdraw its order. The withdrawal can only be operative from the date when the order of withdrawal has been passed but it cannot be given retrospective effect. In cases where in the exercise of administrative powers an authority withdraws its previous order, the withdrawal cannot have retrospective effect but if this Court or any other court in the exercise of its powers holds that the order then passed was an invalid order, it cannot be said that the order passed by this Court will be operative only from the date when it is actually passed. At any rate, at this stage it need not be decided whether the writ given by this Court will have effect on the suit. In those circumstances the applicant is entitled to the determination of the question whether the order passed by the Rent Control and Eviction Officer on the 11th May, 1953 was a valid or invalid order and the relief cannot be refused on the ground that it may be subsequently ineffective.

10. The second point urged by the opposite parties was that the applicant went up in revision against the order of the Rent Control and Eviction Officer and he deliberately got his revision dismissed for default and he cannot now come and ask for the exercise of the powers under Article 226 of the Constitution and urge that he has exhausted all his remedy. It is not necessary to go into the question whether the dismissal for default is a proper dismissal or not. At any rate, the applicant did seek his remedy before the proper court and also applied for the restoration of the case. In these circumstances it cannot be said that he is not entitled to a relief under Article 226 of the Constitution on the ground that he has not bona-fide pursued his remedy before any court. It has been laid down as

a rule by all the courts that exercise of power under Article 226 of the Constitution is a discretionary one and in the exercise of that discretion this Court will not give any relief to the Petitioner, if he has another alternative remedy available to him. In the cases where the applicant has already availed of the alternative remedy, the ground is stronger for refusing the relief but it cannot be said that the relief will be refused to the applicant on the ground that he did not pursue bona-fide his remedy before another court. It was then urged that the applicant should have asked for a relief of quashing the orders passed by the Commissioner and the State Government and in the absence of any such prayer, this Court cannot under Article 226 of the Constitution quash the order of the Rent Control and Eviction Officer as the order of the Rent Control and Eviction Officer has merged into the orders of the Commissioner and the State Government. Reliance was placed on two cases of this Court: Hafiz Mohammad Yusuf v. The Custodian General Evacuee Properties, New Delhi 1954 A.W.R. (H.C.) 135, and Azmatullah and Ors. v. The Custodian, Evacuee Property, U.P., Lucknow 1955 A.W.R. (H.C.) 447. These were the cases under the Administration of Evacuee Property Act. It was held by this Court that the order of the Deputy Custodian General merged into the order of the Custodian General u/s 27 of the Administration of Evacuee Property Act. There are two objections of the other side to the acceptance of this argument. Firstly, the principle that the order passed by the subordinate court merges into the order of the appellate court applies to decrees and orders of courts. If once, it is urged by the opposite parties, that the order passed by the Rent Control and Eviction Officer is an administrative order, then the question of merger of the Rent Control and Eviction Officer's order into the order of the Commissioner does not arise. In those cases it was held that the power exercised by the Custodian General u/s 27, though characterised as a revisional power, was like that of an appellate power and, therefore, the principle which applies to the cases of appeal was made applicable to the order passed by the Custodian General. Those cases stand on entirely different footing. There the prayer was not made for the quashing of the order of the Custodian General on the ground that if the Custodian General had been impleaded as a party, this Court had no power to issue a writ against the Custodian General, and, therefore, the omission to implead the Custodian General and to seek a remedy for setting aside the order passed by the Custodian General was the deliberate act of the Petitioner and consequently if the order was issued by this Court granting a writ quashing the order passed by the Deputy Custodian General, it would have led to an inconsistent position. The order of the Deputy Custodian General had been set aside by the Custodian General or had been confirmed by the Custodian General but if this Court would have set aside the order of the Deputy Custodian General that would have brought about an inconsistent position. In the present case no such difficulty exists. It is open to this Court even to grant the relief quashing the orders of the Additional Commissioner and the State Government and it cannot be argued that these parties are beyond the jurisdiction of this Court and as such it cannot be said that the present writ petition will fail on that ground.



11. In the circumstances of the case there is no force in the objections raised by the other side. I allow this petition and quash the order of the Rent Control and Eviction Officer dated 11th May, 1953.

12. In the circumstances of the case, the parties will bear their own costs.