

(1956) 10 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1337 of 1956

Mohibbe Ali and Another

APPELLANT

Vs

The District Magistrate and Others

RESPONDENT

Date of Decision : 03-10-1956

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Government Premises (Rent Recovery and Eviction) Act, 1952 — Section 10, 11, 7, 7(1), 8

Citation : (1957) 27 AWR 25

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : Yashoda Nandan, for the Appellant;

Final Decision : Allowed

Judgement

Mehrotra, J.—This is an application under Article 226 of the Constitution praying that a writ of certiorari be issued quashing the orders of the District Judge, Rampur, dated 15-12-1954 and that of the Competent Authority dated 13-7-1954 and further to quash the notice u/s 7(1) of the U.P. Government Premises (Rent Recovery and Eviction) Act, 1952 (U.P. Act No. XXXIX of 1952) and 10 issue a writ of mandamus to the opposite party No. 1 the District Magistrate, Rampur, No. 3 the Superintendent of Police, Rampur, and No. 4 the Municipal Board, Rampur, ordering them not to take any action in pursuance of the notice dated 7-4-1954.

2. The Petitioners are proprietors of a firm of tobacco merchants known as Firm Syed Amjad Ali Mohibbe Ali. They were the lessees of certain Government premises consisting of two shops and a flat on a monthly rent of Rs. 40/ -. The lease was granted to the Petitioners prior to 1950. In the year 1950 the applicants were negotiating to sublet one of the two shops to the Bata Shoe Company. The House Allotment Officer objected to the right of the Petitioners to sublet without his permission. Consequently the Petitioners applied for and

obtained sanction of the House Allotment Officer on 4-8-1950 and sublet the shop to the Bata Shoe Company. The land was under the management of the Nazul Department of the Municipal Board on behalf of the Government. On 19-12-1952 the U.P. Act XXXIX of 1952 came into force and on 7-4-1954 the District Magistrate, Rampur, who was authorised to perform the functions of the Competent Authority under the Act. gave notice to the applicants purporting to be one u/s 7(1) of the Act requiring the applicants to vacate the premises within thirty days of the notice on the ground that they had made an unauthorised subletting as they had sublet a part of the premises to the Bata Shoe Company. Objections were filed by the applicants against the legality of the notice inter alia on the ground that the Act did not apply to them. By the order dated 13-7-1954 the Competent Authority dismissed the objection and ordered the applicants to vacate the premises within ten days. An appeal was filed against this order u/s 8 of the Act to the District Judge, Rampur, who by his order dated 2-8-1954 passed an interim injunction restraining the eviction of the Petitioners. During the pendency of the appeal a sum of Rs. 320/ - as rent was paid by the Petitioners for the period upto 30-11-1954. As the rent was accepted an application was filed before the District judge by the applicants that the notice had become infructuous. The application was rejected by the District Judge on 13-12-1954 and by the order dated 15-12-1954 the appeal was dismissed. Thereafter talks of compromise between the Chairman of the Municipal Board, Rampur, and the applicants went on and the Petitioners went on paying rent. A sum of Rs. 320/ - as rent for the period upto 31-7-1955 was paid by the applicants to the Board. During the course of these negotiations the Municipal Board was superseded and the District Magistrate was appointed as the Administrator of the Board. The Petitioners have asserted that the Petitioners came to know that on 6-6-56 the District Magistrate wrote so the Superintendent of Police, Rampur, purporting to act in the exercise of the powers u/s 11 of the Act asking him for the police help to forcibly evict the applicants. Thereafter the Petitioners having come to know of this action of the District Magistrate filed the present petition on 14-6-1956. An interim order was passed restraining the opposite parties from evicting the Petitioners.

3. An application was thereafter filed on behalf of the opposite parties for vacating the interim order and pointing out that the Petitioners had already been dispossessed before the order could be served on the opposite parties. There was some controversy between the parties as regards the fact of eviction of the Petitioners. It is contended by the Petitioners that their goods are still lying inside the shop and only a lock had been put by the police but they had not in fact been dispossessed. It has however been asserted by the opposite parties that the Petitioners have been dispossessed. By a subsequent order of 22-3-1956 I directed that the writ itself should be decided at an early date.

4. A counter-affidavit has been filed in which it is stated that after the decision of the District Judge, Rampur, in appeal the applicants were asked to vacate the premises and deliver the possession but instead of doing so the applicants filed

two applications on 21 and 23-12-1956, praying that they should be allowed to remain in possession in one shop and two rooms and the shop in the occupation of the Bata Shoe Company may be taken over by the Municipal Board. This matter was placed before the Board which by its resolution No. 187 dated 21-10-1955 rejected the Petitioners' request. Another application was in the meantime filed on 31-8-1955 seeking permission to deposit rent on condition that they would abide by the decision of the Board. The Petitioners were allowed to deposit Rs. 320/- which was kept in suspense account. On 10-12-1955 an application was filed for the review of the Board's order and the president directed the stay of ejectment proceedings. Another application was then filed on 1-3-1956 on which the president ordered on 14-3-1956 that the case be placed before the Board for consideration. A cheque was sent by the Petitioners on 16-2-1956 for Rs. 200/- but that has not yet been cashed by the board. Thereafter on 2-5-1956 the Board had been superseded and the District Magistrate was appointed as Administrator. The matter was then referred to the Administrator who ordered for taking possession of the disputed premises. On 14-6-1956 before the orders of this Court could be sewed, according to the opposite parties, the Municipal Board had already obtained possession on that date through police aid and the shops are now under the possession of the Municipal Board. The claim of the Petitioners that the Act does not apply to them and the notice is illegal is refuted by the opposite parties.

5. From the facts set out in the affidavit and the counter-affidavit it is admitted that the Petitioners were essees prior to the coming into force of the Act of 1952. It is also admitted that one of the shops was let out to the Bata Shoe Company by the Petitioners in the year 1950 and that no steps have been taken by the Competent Authority under Act XXXIX of 1952 for the eviction of the Bata Shoe Company as sub-lessee of the shop. It is also admitted that the flat is in possession of the Petitioners. There is some dispute between the parties with regard to the shop. According to the Petitioners, as I have already pointed out, the shop is still in the occupation of the present applicants inasmuch as their goods are lying inside the shop and the police had only put its lock. While according to the opposite parties the possession had already been taken by the Municipal Board on 14-6-1956 of the disputed shop as well.

6. Three main points have been urged by the Petitioners. Firstly, it is contended by them that as the subletting was done prior to the coming into force of the Act XXXIX of 1952 it was not possible for the applicants to secure permission of the State Government or of any prescribed authority prior to the subletting and consequently the Petitioners committed no breach of the terms of the lease. The provisions of Section 7 do not apply to the case where the subletting had been done prior to the coming into force of the Act as from the very nature of things. It will not be possible for the lessees to have obtained any sanction of the Government before subletting the premises prior to the Act of 1952. Secondly, it was contended that the subletting having been done with the consent of the Rent Control and Eviction Officer and no objection having been taken by the State

Government in the year 1950 to the subletting it must be deemed to have been sublet with the consent of the State Government and the provisions of Section 7 were complied with. It was further contended by the Petitioners that in any case after the coming into force of the Act such a permission should have been granted by the State Government and the Petitioners are not liable to be ejected unless the State Government had applied its mind and refused permission. It was further contended by the present applicants that the only right which the Competent Authority had was to evict the sub-tenant from the portion which was sublet and the Petitioners who were occupying a major portion of the premises could not be ejected from that portion. The remedy of the opposite parties may be to realise compensation from the applicants.

7. Lastly, it is urged that the Act is ultra vires of the Constitution.

8. It was contended by the Standing Counsel for the opposite parties that the notices were issued against the Petitioners in the year 1954 and the District Judge also passed the order in 1951. It is therefore not open to the Petitioners now to come up to this Court and ask for a writ of certiorari challenging the orders passed in the year 1954. There is no substance in this objection. It was alleged by the Petitioners in their affidavit that after the order had been passed by the District judge on 15-12-1954 and notice had been issued by the Competent Authority negotiations went on with the Municipal Board and the present applicants. Ultimately the Petitioners came to know on enquiry about the 6th of June 1956 that the District Magistrate had written to the Superintendent of Police, Rampur, purporting to act in the exercise of powers u/s 7 of the Act requesting the police to forcibly evict the Petitioners. Thereafter this petition was filed. The Petitioners had a right to come to this Court after the notices of ejectment had in fact been enforced or the attempt was made by the opposite parties to enforce the notice and to forcibly eject the Petitioners. The opposite parties had not denied that the Petitioners had been dispossessed in pursuance of the notice some times in June 1956. It cannot therefore be said that the Petitioners had no right to come to this Court under Article 226 of the Constitution for the reliefs claimed by them.

9. Coming to the first point urged by the Petitioners the argument urged by the Petitioners is that both the clauses of Section 7 have got to be read together. Section 7 of the Act provides as follows:

7. (1) If the competent authority is satisfied

(a) that the person authorised as lessee or allottee to occupy any Government premises has, whether before or after the commencement of this Act,

(i) sublet without the permission of the State Government or the authority appointed in that behalf by the State Government the whole or any part of such premises, or

(ii) otherwise acted in contravention of any of the terms, express or implied,

under which he is authorised to occupy such premises; or

(b) that any persons is in unauthorised occupation of any Government premises, the competent authority may by notice served in such manner as may be prescribed require that person as well as any other person who may be in occupation of the whole or any part of the premises to vacate it within thirty days the date of the service of the notice.

(2) If any person refuses or fails to comply with any requisition under Sub-section (1), the competent authority may, except in cases provided for in Section 10 and after considering the objections, if any, of the person required, order his eviction from the premises within a time to be fixed. A notice of the order shall be given to the person to be evicted.

(3) If the order passed under Sub-section (2) is not complied within the time fixed the competent authority may evict the person or any other person who may be in occupation of the premises.

10. Sub-section (1) of Section 7 which provides that if the lessee had sublet the premises before or after the coming into force of this Act the Competent Authority can issue a notice of ejectment, should be read with Clause (b) which gives power to the Competent Authority to issue such a notice in the event of the lessee contravening any of the conditions of the lease. The result therefore is that the Legislature intended to treat the subletting at a par with the breach of other conditions of the lease. If there was no condition in the lease itself prohibiting the lessee from subletting the premises the act of subletting cannot amount to any breach of the conditions of the lease and consequently in those cases the Competent Authority will not be entitled to issue a notice u/s 7. I do not think there is any force in this argument. Clauses (a) and (b) are the two independent clauses of Section 7(1). The subletting of the premises by a lessee is by itself an independent ground for issuing a notice u/s 7 from the breach of other conditions of the lease. There may or may not be any express condition in the lease prohibiting the lessee to sublet the premises, and therefore subletting cannot be put on the same footing as any other breach of the conditions of the lease.

11. The next argument urged by the Petitioners was that as the subletting is done prior to the coming into force of the Act itself such a subletting would not have been contemplated by Section 7(1)(a) of the Act. I do not think there is any force in this contention either. Section 7(1)(a)(i) itself provides

That the person authorised as lessee or allottee to occupy any Government premise has, whether before or after the commencement of this Act

(i) sublet without the permission of the State Government or the authority appointed in that behalf by the State Government the whole or any part of such premises,

the competent authority may by notice served in such manner as may be

prescribed require that person as well as any other person who may be in occupation of the whole or any part of the premises to vacate it within thirty days of the date of the service of the notice.

12. The words "whether before or after the commencement of this Act" make it clear that the Legislature purposely empowered the Competent Authority to issue a notice in the event of sub letting without the permission of the State Government whether done prior to the Act or subsequent to the coming into force of the Act.

13. The next contention of the Petitioners is that at the time when the subletting was done there was no prescribed authority and consequently the Petitioners were not in a position to obtain any permission either from the State Government or from the prescribed authority and there is no provision in the Act under which any procedure is provided for applying for permission subsequent to the coming into force of this Act in respect of the subletting done prior to the Act. There could no doubt have been no prescribed authority before the coming into force of the Act. It is also true that the Petitioners could not have asked for permission prior to the coming into force of the Act but there is no bar u/s 7 to the Petitioners to have asked for the necessary permission after the coming into force of the Act, and no attempt appears to have been made by the Petitioners to obtain such a permission. Consequently the Petitioners cannot be entitled to any writ of mandamus directing the State Government or the prescribed authority to consider their request for the grant of such a permission. The condition for the exercise of the power to issue notice depends upon the existence of the fact that the subletting had been done without the permission of the State Government or the authority appointed in that behalf by the State Government. The fact whether such a permission was obtained is therefore a fact which can be examined by this Court in a writ petition.

14. There is nothing in Section 7 which, as I have already indicated, prescribes the method of obtaining permission from the State Government. No particular form in which the permission is to be granted is prescribed under the Act. The question whether such a permission can be said to have been granted or not can also be inferred from the circumstances of a particular case. In the present case the subletting was done some-times in the year 1950 and as has been stated by the Petitioners on an objection being raised by the Rent Control Officer his permission was obtained before subletting to the Bata Shoe Company. The Act came into force in 1952. The notice was served by the Municipal Board on 17-4-1954. No steps were taken by the Competent Authority to issue any notice for two years after the coming into force of the Act. When the matter was finally disposed of by the District Judge no steps have been taken by the Board to eject the Petitioners. On the contrary, as alleged by the opposite parties, under a protest without conceding the right of the Petitioners rent had been accepted by the Municipal Board. Under the circumstances the Petitioners are justified in asking this Court to infer an implied permission by the State Government to the

Petitioners to sublet the premises. The conduct of the Government also in not taking any steps against the Bata Shoe Company who were allowed to occupy the premises in contravention of the provisions of this Act points out to the conclusion that the State Government acquiesced in the conduct of the Petitioners in subletting the premises to the Bata Shoe Company. In all the circumstances a legitimate inference can be drawn that the subletting was not done without permission of the State Government and consequently there was no power to issue a notice u/s 7.

15. The Petitioners have come to this Court only when steps were taken to actually oust them from the possession of the premises.

16. The question of the constitutionality of the Act was not seriously pressed by the Petitioners and it is not necessary for me to consider that question.

17. I therefore allow this petition, quash the notice issued by the opposite party No. 1 on 13-7-1954 and the order of the District Judge dated 15-12-1954 and further direct the opposite parties Nos. 1, 3 and 4 not to act under that notice. The opposite parties-are also directed to restore possession of the premises to the Petitioners; but in the circumstances I make no order as to costs.