

(1951) 07 AHC CK 0013
In the Allahabad High Court

Case No : Exn. Second Appeal No. 798 and Civil Revision No. 249 of 1949

Mt. Ahmadi Begum

APPELLANT

Vs

The District Magistrate

RESPONDENT

Date of Decision : 25-07-1951

Acts Referred:

Uttar Pradesh (Temporary) Accommodation Requisition Act, 1947 — Section 11, 16, 3

Citation : AIR 1951 All 830 : (1951) 21 AWR 586

Hon'ble Judges : Sapru, J; Agarwala, J

Bench : Division Bench

Advocate : B.C. Saxena, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—The District Magistrate of Agra requisitioned a house, u/s 3, U. P. (Temporary) Accommodation Requisition Act, 1947, situated within the limits of the Agra Cantonment for the purposes of allotting it to one Moti Ram Mahgha Ram Sahni. Shrimati Ahmadi Begam, who appears to be the owner of the house was in occupation of the house. She refused to vacate the house as directed by the District Magistrate. The District Magistrate, under the provisions of Section 11 of the said Act, applied to the Munsif of Agra for aid in getting the house vacated and in executing his order. Shrimati Ahmadi Begam and her son, Riyaz Uddin, filed an objection before the learned Munsif alleging that they were not liable to be ejected from the house in dispute. The learned Munsif, however, rejected their objection and passed an order on 8th November 1948, directing that the objectors be ejected from the house. The objectors preferred an appeal to the District Judge of Agra. The learned District Judge held that the order of the District Magistrate requisitioning the house was without jurisdiction inasmuch as the Provincial Government which passed the aforesaid Act had no power to make any law with regard to the regulation of housing accommodation in cantonment areas. But, he further found that, since no appeal was provided for in the Act, he had no jurisdiction to interfere with the order of the Munsif. In the result he

dismissed the appeal.

2. The objectors have now come up in second appeal to this Court. This is Second Appeal No. 798 of 1949. They have also applied in revision against the order of the Munsif dated 8th November 1948. This is civil Revision No. 249 of 1949.

3. A preliminary objection has been raised to the hearing of the appeal and the revision. It is urged that u/s 16 of the Act

"no order made in exercise of any power conferred by or under this Act shall be called in question in any Court."

It may be observed that Section 16 bars the challenge to an order which has been made "in exercise of any power conferred by or under this Act." Section 16 does not cover orders made in the purported exercise of any power conferred by or under the Act, which orders are not in law covered by any provision of the Act. Therefore we have to see whether the order of the Munsif was made in exercise of the powers conferred by the Act. The Munsif purported to make the order u/s 11 of the Act. Section 11 runs as follows :

"(1) If any person fails to comply with any order made u/s 3 the Court shall, on the application of the District Magistrate, execute the order as if it were a decree passed by that Court."

4. The words "any order made u/s 3," in our opinion, refer to orders of the District Magistrate which he had jurisdiction to make u/s 3 of the Act. If the District Magistrate had no jurisdiction to make an order with respect to a particular property u/s 3, it could not be said that the order was made under that section. An order made beyond the powers conferred by Section 3 is an order not u/s 3 but outside it. If, therefore, the order of the District Magistrate was not an order which he had jurisdiction to make u/s 3 it was not an order which the Court (which under the Act means the civil Court, be it either the Munsif's Court or the Civil Judge's Court, as the case may be) was bound to carry out.

5. Now the District Magistrate could requisition any accommodation provided that the Act applied to that accommodation. The U. P. (Temporary) Accommodation Requisition Act 1947 being an Act of the Provincial Legislature could not apply to regulate accommodation in cantonment areas. In Entry 2 of List 1 of Schedule 7, Government of India Act, 1935, regulation of accommodation in cantonment areas is a subject which was within the exclusive jurisdiction of the Indian Legislature. The Provincial Legislature had no jurisdiction to make any enactment with regard to that matter. Entry No. 18 in List 3 must be read as not covering regulation of accommodation in cantonment areas which is exclusively a federal subject. The U. P. (Temporary) Accommodation Requisition Act, 1947, extended, no doubt, to the whole of the United Provinces but under Sub-section (3) of Section 1 it was directed that it shall apply to such area as the Provincial Government may, from time to time, direct. Notification dated 16-12-1947

declared that the Act was to apply to thirty-seven districts mentioned in the Schedule attached to the notification. One of the districts was the district of Agra.

6. Normally the term "district of Agra" would include the cantonment area but, having regard to the fact that the Provincial Legislature had no power to include the cantonment areas within the ambit of the Act, we may assume that the cantonment area is not to be covered by the expression "Agra." As such the District Magistrate had no jurisdiction u/s 3 of the Act to requisition any accommodation situated within the cantonment area of Agra, If, however, the Agra cantonment area be deemed to be included in the scope of the notification it must be held that the notification itself was ultra vires qua that area. In either event the District Magistrate would have no jurisdiction to issue the order that he did. That being so, the Munsif was not bound to execute the order as if it were a decree passed by him. The matter was so clear that it should have occurred both to the District Magistrate as well as to the Munsif and no orders should have been passed by the District Magistrate and, if orders had been passed by the District Magistrate they should not have been carried out by the Munsif.

7. In our opinion, therefore, the learned Munsif having had no jurisdiction to execute the order in question, of the District Magistrate, the prohibition contained in Section 16 does not apply. At the same time, since no appeal is provided for under the Act against an order of the Munsif executing the order of the District Magistrate, it must be held that the objectors' appeal to the lower appellate Court was not maintainable. The appeal was, therefore, rightly dismissed by the learned District Judge. No such objection, however, could be made against the application in revision to the Court.

8. Section 16, as already stated, being out of the way there is nothing to prevent us from entertaining the revision application.

9. As we have stated, the order of the Munsif was without jurisdiction. We must, therefore, set it aside, in the exercise of our revisional jurisdiction.

10. We, therefore, dismiss Second Appeal No. 798 of 1949 and allow Civil Revision No. 249 of 1949. We set aside the order of the Munsif dated 8-11-1948. The execution proceedings started in pursuance of the order of the District Magistrate and his application to the Munsif for execution of that order are quashed.

11. In the circumstances of the case, we direct the parties to bear their own costs in the appeal as well as in the revision.

12. The record of this case shall be sent back to the Court below immediately.