
(1956) 10 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 215 of 1956

Nanhe Mal and Another

APPELLANT

Vs

Station Staff Officer Meerut Cantonment and Others

RESPONDENT

Date of Decision : 10-10-1956

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Cantonments (Control of Rent and Eviction) Act, 1952 — Section 1, 10, 10(2), 10(3), 10(4)

Citation : (1957) 27 AWR 35

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : S.N. Misra, for the Appellant;

Final Decision : Allowed

Judgement

Mehrotra, J.—There are two shops Nos. 340 and 340A situated in mohalla Rangsaaz in Meerut Cantonment. They were rented out to one Mohamrnad Khan in the year 1914. He put up certain machineries there and obtained electric connection for working those machines. According to the Petitioners he established a factory there and in the year 1947 the entire running factory was sold to one Shri Malik Ram, who thereafter sold it to the owners of the house Messrs. Sagarmal Mohan Lal and Sons who are opposite party No. 4 in this petition in execution of a decree on 3-1-1956. The Petitioners state that thereafter the owners sold the running factory situated in the shop along with the machineries on 4-1-1956 to the Petitioners. Under that transfer (he Petitioners came in possession of the two shops and the compound along with the machineries fitted therein.

2. The opposite-party No. 1 Station Staff Officer of Meerut Cantonment issued a notice upon opposite-party No. 4, the owners of the premises asking them to let out the above shop to the opposite parties Nos. 2 and 3. A reply was sent by the owner to that notice. Thereafter another notice was served upon the applicant

who also sent his reply on 11-1-1956. On 17-1-1956 another notice was served by the Station Officer on the petition which reads as follows:

Whereas I the undersigned am satisfied that you are in possession of shops Nos. 340 and 340A Rangsaaz mahal, Meerut Cantonment in contravention of the provisions of Section 9(1) of the U.P. Cantonment Rent (Control and Eviction) Act, 1952, I hereby call upon you to vacate the said premises within 15 (fifteen) days from the date of service of this notice.

I am to warn you that in case you fail to vacate the said premises within the period specified above, you will be liable to be forcibly evicted therefrom.

3. A reply was sent to this notice on 18-1-1956 by the Petitioners. On 25-1-1956 a letter was sent to the Superintendent of Police of Meerut by the Station Staff Officer in which it was requested that under Clause 10 of the U.P. Rent Control and Eviction Act arrangement may be made to evict the Petitioners and its possession be handed over to Sri Harcharan Singh and Bodh Raj who were the allottees. The Petitioners approached the Superintendent of Police but he was forcibly dispossessed on 28-1-1956 and the opposite parties placed their unauthorised lock over the factory. On these facts the present petition was filed on 8-2-1956 under Article 226 of the Constitution praying that a writ of certiorari be issued quashing the order of allotment in favour of opposite parties Nos. 2 and 3 and the order made u/s 10 of the U.P. Cantonment Control of Rent and Eviction Act by the Staff Officer for the ejectment of the Petitioner and a mandamus be issued directing the opposite parties to restore possession to the applicants.

4. Notices were issued to the opposite parties and counter affidavits have been filed on behalf of the opposite parties Nos. 2 and 3. In the counter affidavit it is stated that in the year 1955 a suit was filed by the landlord for ejectment and arrears of rent against Shri Malik Ram. In execution of that decree various machineries and goods were purchased by the landlord himself. Different persons also purchased some other items of machineries. It has been denied that it was first purchased by Shri Malik Ram but subsequently he sold the running factory to the owners and that subsequently the owners sold the running factory to the Petitioners. A letter was sent by the owners to the Staff Officer on 7-1-1956 in reply to the notice that they had negotiated for sale of the grinding machine, motor etc. with the applicant. On 3-1-1956 opposite parties Nos. 2 and 3 separately applied for allotment of one of the two shops to each of them by separate orders, one shop was allotted to each of them on 19-1-1956. In the course of the argument it was stated that the allotment must have been made earlier but the former order was issued sometime on 19-1-1956. On 19-1-1956 after the allotment the opposite parties Nos. 2 and 3 moved the Station Staff Officer stating that the owners have refused to deliver possession and that the shops were illegally in possession of the Petitioners and consequently police assistance should be given. It was clearly stated by the Petitioners in reply to their notice of the 17th January that they had no intention to vacate the

premises. Consequently it was not necessary for the authorities to have waited for the expiry of 15 days given in the notice. Another notice on 25-1-56 was issued and when the Superintendent of Police was appraised of this situation he withdrew the order which he had passed earlier staying the ejectment till the expiry of 15 days and thereafter possession was taken by the opposite parties and opposite parties Nos. 2 and 3 were placed in possession. It was then stated in the counter affidavit that on 27th January the Petitioner filed a suit in the court of City Munsif, Meerut praying that the opposite parties Nos. 2 and 3 be restrained from taking possession of these shops and that the Station Staff Officer be restrained from evicting the applicants on the ground that the orders were illegal and ultravires. This fact was according to the opposite parties deliberately suppressed by the Petitioners. On 20-5-1956 the counsel for the Petitioners in the suit stated that the applicants were not in possession over the accommodation in dispute and that in view of that statement the Munsif passed an order to the effect that the suit has become infructuous and the suit was therefore, dismissed.

5. A rejoinder affidavit was filed in which the facts earlier have been ragitated. Two points were urged by the Petitioners. Firstly it is contended that the provisions of UP Cantonment Rent Control and Eviction Act did not apply to the disputed shops as they come within the definition of the factories. Reliance was placed on the definition of accommodation in Section 3 of the Act which provides as follows:

"Accommodation" means house accommodation, residential or non-residential, in any cantonment to which this Act applies, and includes- (i) the gardens, grounds or outhouses, if any, appurtenant to the building or any part thereof;

(ii) any furniture supplied by the landlord for use in the house or any part thereof;

(iii) any fittings affixed to the building or any part of the building for the more beneficial enjoyment thereof;

6. In this connection reference was also made to the definition of the word accommodation in the U.P. Control of Rent and Eviction Act which reads as follows:

"accommodation" means residential and non-residential accommodation in any building or part of a building and includes

(i) gardens, grounds and out houses but does not include any accommodation used as factory or for any industrial purpose where the business carried on in or upon the building is also leased out to the lessee by the same transaction.

7. The argument of the learned Counsel for the Petitioner is that as the opening words of the definition in the Rent Control and Eviction Act were wide enough to include a factory the Legislature thought it proper to enact a clause which expressly excluded a factory from the definition of accommodation. As against

that in the U.P. Cantonment Rent Control and Eviction Act no such clause excluding a factory has been enacted which shows that the words in which the accommodation has been defined are not wide enough to include a factory and thus no necessity was felt to exclude factory from the definition of accommodation. There is no substance in the argument.

8. The language of Section 2 of the Act is to be examined and in my opinion it is wide enough to cover a factory situate in a shop. Emphasis was laid by the Petitioner on the word house and it was urged that the house necessarily exclude the idea of a shop and a factory. The Legislature has expressly enlarged the scope of the word house accommodation by adding word residential or non-residential. From the perusal of the sub-clauses of clause A it will also be clear that the house in the definition includes any building or any part of any building. In my judgment therefore, there is no force in the Petitioners' contention that the Act did not apply to the accommodation in question. The next point which was urged by the Petitioner is that there has been no compliance with the provisions of Section 10 of the act.

9. Section 10 provides that "Where in pursuance of an order of the officer commanding the station under Sub-section (1) of Section 9 the vacancy of any accommodation is required to be reported and is not so reported, or where an order requiring any accommodation to be let or not to be let has been duly passed under that Sub-section and the officer commanding the station believes, or has reason to believe, that any person has, in contravention of such order, occupied the accommodation or any part thereof, he may call upon the person in occupation to show cause, within such time as may be fixed by him, why he should not be evicted therefrom

10. Sub-section (2) of Section 10 provides that "If such person fails to appear in reply to the notice served under Sub-section (1), or, if he appears but fails to satisfy the officer commanding the station that the order under Sub-section (1) of Section 9 was not duly passed and that he is entitled to remain in occupation of the accommodation, the officer commanding the station may, without prejudice to any other action which may be taken against him under this Act, or any other law for the time being in force, direct him to vacate the premises within such period as he may specify,"

11. Sub-section (3) of Section 10 provides that. "Upon the making of an order under Sub-section (2), the person against whom the order is made and any other person claiming under him shall vacate the accommodation and if the person does not vacate the accommodation and if the person does not vacate the accommodation within the time allowed or such extended period as the officer commanding the station may, on cause shown, allow, the officer commanding the station may evict, or cause to be evicted, the person or persons concerned and may use such force as may be necessary for carrying out the order and also put the person entitled under Sub-section (1) of Section 9 in occupation of the accommodation."

12. Section 9 empowers the station officer by a general or special order to direct the landlord to give any house to his allottee.

13. In the present case the allotment order itself was passed on 19th January and the notice had already been given on the 17th January. It cannot therefore, be said that the possession of the Petitioner was in contravention of the order of allotment passed in favour of opposite parties Nos. 2 and 3. Moreover, Section 10 contemplates two notices one is given to an occupant to show cause within a specified time as to why he should not be evicted. The second notice is given to the occupant to vacate the premises within a specified time. On the failure of the occupant to vacate it the right is given under Sub-clause 3 to the Commanding Staff to evict the Petitioners by use of force. In the present case the only notice which was given to the Petitioner was on the 17th January asking him to vacate the premises within a fortnight. There was no notice given to the Petitioner under Clause 1. The notice therefore of the 17th January is not a legal notice inasmuch as the condition precedent for the issue of a notice under Clause 2 was not complied with. The letter which was written by the opposite party to the Superintendent of Police was only asking for his help to actually evicting the Petitioner. It is also significant to note that the opposite parties did not even wait till the expiry of 15 days mentioned in the notice before actually taking forcible possession of the premises. The only explanation given by the opposite parties in the counter affidavit is that from the attitude of the Petitioner it was evident that he was not likely to vacate the premises But that is no ground for taking forcible possession of the premises.

14. Clause 3 which gives power to the Commanding Staff to seek police help and to forcibly ejecting the occupant comes into play only when the notice given in Clause 2 is not complied with and unless the period given in the notice expires it cannot be argued that the terms of the notice had not been complied with. It was then contended by the opposite-parties that Section 10 contemplated proceedings against an occupier the Petitioners had not got possession of the premises till the 7th when the landlord had written to the officer commanding that they were making arrangement with the present Petitioners that the house should be allotted to them; the possession of the Petitioners thereafter was for and on behalf of the landlord, I do not think that there is any force in this contention. The notice was issued to the Petitioners on the 7th of January to vacate the premises. They were treated by the opposite parties as occupants of the premises. It is not therefore, open now to the opposite parties to say that no notice should have been given to the Petitioners u/s 10 as they were not occupants. If the argument of the other side is accepted then it will have to be conceded by them that the notice issued to the Petitioners on the 17th January was not a legal notice and should be discharged.

15. The next point which was urged by the opposite parties is that the Petitioners had an alternative remedy by way of revision to the Central Government as provided for u/s 10 Sub-section (4) of the Act and therefore, they are not

entitled to any relief under Article 226 of the Constitution. It was in this connection further pointed out that the landlord had already filed a similar revision to the Central Government and therefore in fact the remedy which is available to the Petitioner has been availed of by the landlord himself and unless that is decided by the Central Government the present petition cannot be entertained.

16. Section 10 Sub-section (4) provides that "No appeal shall lie from any order passed by the officer commanding the station under this section, but the Central Government or any person authorised by it in this behalf may revise the said order if it is satisfied that the officer commanding the station has acted illegally or with material irregularity or has wrongly refused to act, and may make such order in relation thereto as it thinks fit."

17. That is a revisional power given to the Central Government against the order passed by the Commanding Officer. That however, gives no power to the Central Government to stay the operation of the order or to stay the ejectment of an occupant during the pendency of the revision proceedings. If an occupant is threatened with forcible ejectment he naturally needs an immediate relief and it cannot be said that relief by way of revision would be equally adequate and efficacious. It was then urged by the opposite parties that the Petitioner is disentitled to any relief under Article 226 of the Constitution as he deliberately suppressed the fact that he has filed a suit and that he had availed of the alternative remedy. The suit was for an injunction on the ground that the Petitioners were in possession of the premises. As soon as statement was made that the Petitioners had been dispossessed the suit was dismissed. In the present petition the Petitioner has challenged not only the validity of the notice of the 17th January but has further asked for a writ of mandamus directing the opposite parties to deliver back possession to the Petitioners as they had dispossessed the Petitioners without any authority of law. Such a relief could not be granted in the suit which had been filed for the injunction alone. Moreover in the circumstances of the case the alternative remedy of suit cannot be considered as equally adequate. It was then urged that it is not open to this Court to grant a relief directing the opposite parties to deliver back possession to the Petitioners; Even if it be accepted that the notice of the 17th January was an illegal notice the defect was only a defect of procedure and the Petitioners will be entitled to a notice under Clause 1 but that does not mean that the Petitioners will be entitled to remain in possession of the property and challenge the allotment in favour of the opposite parties and this Court should not therefore, exercise its discretion and direct the opposite parties to hand over the possession to the Petitioners.

18. In the case of *Raghunath Pd. Srivastava v. The State of U.P.* Writ No. 679 of 1952 a petition was filed challenging the dispossession without proper notice u/s 7(a) of the Rent Control and Eviction Act which is similar to Section 10 and this Court set aside the order as forcible possession was taken from the Petitioner on

the ground that no proper notice u/s 7(A) had been given to him and further directed that till the subsequent proceedings were taken according to law the applicants should be put back in possession of the house from which he had been forcibly dispossessed. The Petitioners had been dispossessed in pursuance of Clause 10 Sub-clause 3 and if the order of the 17th January is set aside the dispossession of the Petitioner was without authority of law. It is therefore open to the Petitioner to ask for a writ of mandamus directing the opposite parties not to disturb the possession of the Petitioners and to deliver back possession to the Petitioner.

19. I therefore allow this petition, quash the notice of the 17th January and direct the opposite parties to re-deliver possession to the Petitioners over the louse which they had forcibly taken till proper action is taken u/s 10 of the Act with costs.