

(1955) 12 AHC CK 0010
In the Allahabad High Court
Case No : Special Appeal No. 24 of 1955

Pt. Joti Prasad Bajpai

APPELLANT

Vs

Dau Dayal and Others

RESPONDENT

Date of Decision : 01-12-1955

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226

Citation : (1956) 26 AWR 159

Hon'ble Judges : Mootham, C.J;Agarwala, J

Bench : Division Bench

Advocate : B.R. Avasthi, for the Appellant; Ambika Prasad, for the Respondent

Final Decision : Allowed

Judgement

Mootham, C.J.—This is an appeal against a judgment of a learned Judge of this Court dated the 25th January, 1955, dismissing a petition under Article 226 of the Constitution. The facts so far as they are material lie in a narrow compass. The Appellant is the owner of a shop in Sarrafa Bazar, Hathras, which has been in the occupation of one Dau Dayal, the first Respondent, for a number of years as the tenant of the Appellant. On the 12th January, 1953, the District Magistrate of Aligarh granted permission to the Appellant u/s 3 of the U.P. Control of Rent and Eviction Act, 1947, to file a suit against the first Respondent for his eviction from the shop. The first Respondent then applied to the Commr. under Sub-section (2) of that section to revise the order of the District Magistrate, and on the 17th March, 1953, the Commr. allowed the application and set aside the order of the District Magistrate. The Commissioner's order was in these terms:

I do not think permission should have been granted to file suit for ejectment of the applicant who has been carrying on business in this shop for the last 16 years. I allow the revision application, cancel the order giving permission to file a suit for the ejectment of the applicant.

2. The next step was that the Appellant submitted a petition to the State Government asking the latter, in exercise of its supervisory powers u/s 7-F of the Act, to set aside the order of the Commr. and restore that of the District Magistrate. The State Government declined however to interfere.

3. A Commissioner's jurisdiction in revision under the Act as it was in-force in 1953 was restricted to cases in which the District Magistrate had acted illegally or with material irregularity or had wrongly refused to act; he could not at the time the order was made interfere on the ground that he was not satisfied with the propriety of the District Magistrate's order. That however was clearly the ground on which he did interfere in the present case, and it is hardly disputed that the order which he made on the 17th March, 1953, was without jurisdiction. The learned Judge however dismissed the petition on the ground that the order of the Commr. had merged in that of the State Government which the Appellant had not challenged in the petition.

4. Now Section 7-F so far as is material provides that "The State Government may call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in Section 3...and may make such order as appears to it necessary for the ends of justice", and we entertain no doubt that where an order has been made under this section it takes the place of or supersedes the order of the District Magistrate or the Commr., as the case may be, made u/s 3. The communication however which the Appellant received conveying the decision of the State Government reads thus:

Lucknow dated 6-7-1953.

Subject: Application against the order refusing permission to sue for ejectment of the tenant from the shop No. 125, Mursan Ward, Sarafa Bazar, Hathras, District Aligarh.

5. Sri Jyoti Prasad Bajpai is informed regarding his application dated 16-6-1953 on the above subject that the State Government does not consider it necessary to interfere in the order of the Commr. of Agra-Meerut Ruhelkhand Division," and the question which in our opinion arises is whether this constitutes or is evidence of an order by the State Government within the meaning of Section 7-F. The matter is not free from difficulty, but in our judgment the answer must be in the negative. The communication does not say that the State Government has made any order, and its terms are consistent with the State Government being of opinion that, as it agreed with the view of the Commr., no order was necessary. Had the State Government confirmed the order of the Commr. the position might have been different, but the communication does not say that this was done. We are not in the circumstances satisfied that any order has in fact been made by the State Government which supersedes that of the Commr.

6. We are therefore of opinion that the fact that the Appellant did not ask for the order of the State Government to be quashed was not a bar to the success of his Petition. The appeal must therefore be allowed and a writ will issue quashing the

order of the Commr. dated the 17th March, 1953. The Appellant is entitled to his costs which will be paid by the first Respondent.