
(1975) 02 AHC CK 0011
In the Allahabad High Court
Case No : Criminal Reference No. 587 of 1972

Pt. S.N. Pandey

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 20-02-1975

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 263, 307, 310, 310(3)

Citation : (1975) AWC 230

Hon'ble Judges : P.N. Bakshi, J

Bench : Single Bench

Advocate : D.S. Tewari, for the Appellant; Banarsi Das, for the Respondent

Judgement

P.N. Bakshi, J.—Smt. Bhagwan Devi is the owner of the house No. 59 Ara Ghar, Police Station Kotwali, District Dehradun. Notice was given to her u/s 263 U.P. Municipalities Act by the Municipal Board to demolish the construction as it was in ruinous condition and is likely to fall and jeopardise the lives of the people living in the vicinity. Satya Narain is the tenant of these premises. He refused to vacate the portion of the house occupied by him and kept it constantly locked. An application was therefore, given by the landlady Smt. Bhagwan Devi u/s 310 of the Municipalities Act praying that Satya Narain be ejected from the premises, as she could not comply with the notice sent to her by the Municipal Board. On this application without giving notice to the tenant, the Magistrate concerned has passed an order by which he had directed the premises in the occupation of the tenant to be unlocked and the inventory of the goods prepared and made over to a reliable Supardar.

2. Aggrieved thereby, a revision was filed by Satya Narain before the Sessions Judge Dehradun who has made the present recommendation to this Court for quashing the impugned order of the Magistrate.

3. I have heard learned Counsel for the parties and have also perused the referring order. In my opinion this reference is well founded and it must be

accepted.

4. If the landlord is unable to comply with the notice given to her u/s 263 of the Municipalities Act for demolishing the construction as a result of the obstruction caused by the tenant, it is still open to the landlord to have brought this fact to the notice of the Municipal Board u/s 263 of the Municipalities Act and the occupier of the building who is in this case a tenant could also have been served with a notice of demolition. If inspite of service of such a notice, the tenant still obstructs the demolition of the construction by his high handedness, then u/s 307, the Municipal Board could have taken action to get the construction demolished.

5. Smt. Bhagwan Devi has in the present case applied u/s 310 of the Municipalities Act. This section only authorises the Magistrate to take action against the occupier, if he refuses to allow such owner to take such action as is required under the provisions of the notice issued under the Municipalities Act. But it is noteworthy that this action of the Magistrate is confined only to the imposition of fine upon conviction which may extend to Rs. 25/- per day during the period which he has so continued to refuse compliance of the notice.

6. A perusal of Section 310, Municipalities Act makes it amply clear that in the first instance when the information of the intention of the owner of any building or land to take action in compliance with a notice issued under this Act has been given and the occupier refuses to allow the owner to take such action, and a grievance is made to the Magistrate that the occupier has refused or has not permitted the compliance of the notice, in that case, the Magistrate has to obtain proof that the occupier has actually refused to allow the owner to execute the work which he is required to do. For this purpose, it is very necessary that the occupier of the premises should be given due notice so that he may come forward and explain whether he has or has not obstructed the execution of the order of the Municipal Board.. Thereafter, the Magistrate has to arrive at his conclusion. Even then it is necessary under Sub-section (3) of Section 310 for the Magistrate to give eight days time to the occupier to comply with the order and if he still refuses to allow the owner to execute such work, in that case the Magistrate upon convicting him may impose a fine of Rs. 25/- per day. There is nothing in Section 310 of the Municipalities Act which authorises the Magistrate to pass an order that the premises in the occupation of the occupier shall be unlocked and the inventory of the goods be made and placed in the supardagi of a reliable Supardar. Such a power has not been given u/s 310 of the Act to the Magistrate. In this view of the matter, I am of the opinion that the impugned order of the Magistrate suffers from a lack of inherent jurisdiction.

7. I, therefore, accept this reference and set aside the order of the Magistrate dated 13-3-1972.

8. Let the record of the case be sent back to the court below at once.