

(1959) 03 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1558 of 1958

Radha Kant Bhargava

APPELLANT

Vs

State of U.P., Lucknow and Others

RESPONDENT

Date of Decision : 13-03-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7F

Citation : AIR 1959 All 737

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : Gopal Behari and S.N. Dwivedi, for the Appellant; Harnandan Prasad and S.C. Khare and Laxmi Saran, Junior Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Dhavan, J.—This is a petition under Article 226 of the Constitution impugning the legality of an order of the Government of the State of Uttar Pradesh passed u/s 7(F) of the U. P. Temporary Control of Rent and Eviction Act by which it reversed the respective decisions of the Additional District Magistrate, Allahabad and the Additional Commissioner, Allahabad refusing permission to the petitioner's landlord to file a suit for the ejectment of the petitioner and granted this permission itself. Very briefly the facts, as stated in the affidavit supporting the petition, are these. The petitioner is the tenant of the respondent Kali Prasad in a portion of the shop known as 78 A. K. P. Kakkar Road, in the city of Allahabad. He has been carrying on the business of selling sanitary fittings and building materials. According to the petitioner the value of the stock in trade stored in this shop and godown at another place is about Rs. 50,000/-. The number of persons employed in his business varies between 20 and 30.

2. The petitioner states that the respondent landlord has been attempting to raise the rent of the shop by filing applications for permission for ejectment from time to time. For the purpose of putting pressure on him in 1945 he filed an

application under the Defence of India Rules which was allowed. The petitioner however agreed to enhance the rent and, so it is alleged by him, also paid a sum of Rs. 150/- as nazrana. This satisfied the respondent landlord and no suit for ejectment was filed against the petitioner. In 1948 the petitioner was again compelled to enhance the rent of the shop on threats of eviction. In 1952 the landlord filed the first of series of applications under the Control of Rent and Eviction Act for permission to file a suit for ejectment against the petitioner.

He alleged that due to the abolition of the Zamindari he had been reduced to straitened circumstances and was not able to support his family. He therefore wanted to start a chemist's shop and also open a school of typewriting for the benefit of one of his sons. The application was opposed by the petitioner and another tenant and was rejected by the Rent Control and Eviction, Officer by his order dated 22-11-1952. The landlord submitted to this order and did not file any revision against it. Within two months however he filed his second application on more or less the same grounds. This too was rejected by the Rent Control and Eviction Officer by his order dated 9-4-1953. Against this order the respondent landlord filed a revision before the Commissioner, Allahabad which too was rejected by his order-dated 2-9-1953.

On 12-10-1954, the landlord filed his third application, a copy of which is annexure VII of the petitioner's affidavit. This time he was successful and, inspite of the opposition of the petitioner, the Rent Control and Eviction Officer granted permission for the filing of his suit for the ejectment of the petitioner. The petitioner however went in revision against this order and the Additional Com-missioner remanded the case to the Rent Control and Eviction Officer for a fresh enquiry. While the case was still pending, the landlord made a representation to the State Government u/s 7(F) and obtained an interim order staying further proceedings in the remanded enquiry. The petitioner filed a petition under Article 226 of the Constitution in this Court impugning the legality of the order of the State Government interfering with the case while it was still in the stage of enquiry.

This Court allowed the writ petition on the ground that the State Government had no jurisdiction to interfere as no final order had been passed granting or refusing permission u/s 3. Thereupon the enquiry was held by the Additional District Magistrate of Allahabad who dismissed the landlord's application and refused permission for the filing of a suit against the petitioner. The landlord's revision before the Additional Commissioner was also dismissed. He then made a representation to the State Government u/s 7 (F). The petitioner also sent his written statement in opposition to this representation. On 30-4-1958, that Government passed an order setting aside the order of the Additional Commissioner and granting permission to the landlord to file a suit for the ejectment of the petitioner. The order pin-ports to have been passed in the interests of justice (nvaya ki drishtise). Aggrieved by this order the petitioner has come to this Court for relief.

3. Mr. S. N. Dwivedi, learned counsel for the petitioner, argued that the third application of the respondent landlord dated 12-10-1954, was barred by principles analogous to res judicata. He contended that the landlord after having filed an application u/s 3, which was dismissed, could not make another application on the same facts. It is not necessary for me to consider whether any principles analogous to res judicata will or will not apply to any order passed under Sec, 3(1); of the Control of Rent and Eviction Act, as I am satisfied, on a perusal of the second and the third applications of the landlord that the last was not based on facts identical with those on which the first two were founded.

In the first and second applications made early in 1953 there is no mention by the landlord of the needs of his third son, but in his third application dated 12-10-1954, he pleaded that his eldest son had become a lawyer and needed a suitable office for his practice. The Rent Control and Eviction Officer took into account this plea when he granted permission for the ejectment of the petitioner, for the order contains the following statement:

"His one son has passed his LL.B and he wants office for him in this building"

4. Thus it is clear that the third and the last application was not entirely based on the old material but contained a new allegation that the landlord needed accommodation to provide for the needs of his lawyer son. When pointed out this difference between the second and third application Mr. S. N. Dwivedi conceded very properly, in my opinion, that this additional circumstance had not been mentioned in the second application. He therefore stated that he did not propose to waste the time of the Court in pressing this point any further,

5. Mr. Dwivedi, however, contended that the order of the State Government was arbitrary inasmuch as it had been passed without considering the-needs of the tenant. He relied upon my own decision made earlier in the day in Ram Kumar v. State, Writ Petition No. 3233 of 1958 (All) in which I held that the power of refusing or granting permission for ejectment u/s 3 is controlled by certain principles which were laid down by a decision of Mehrotra, J. in Shri Krishna v. Additional Commissioner, Allahabad" 1958 All LJ 234. I further held that one of the main objects of the U. P. Control of Rent and Eviction Act is to afford protection to the tenants against eviction and that therefore any decision u/s 3 without considering the needs or the point of view of the tenant would be against the Act.

Mr. Dwivedi contended that the principle laid down in the case decided today applied to the impugned order in the present case. But in Ram Kumar's case, Writ Petn. No. 3233 of 1958 (All), the State Government had stated the reason for granting permission to the landlord. It had stated that permission was being granted on the ground of the need of the landlord. Furthermore, the petitioner in that case had made a specific allegation that the tenant's need had not been considered by the State Government before granting permission to the landlord.

This allegation had been denied on behalf of the State in a counter affidavit

which was held by this Court to be inadmissible as it was sworn by a subordinate official who could not have any knowledge as to whether the official disposing of the case had considered the needs and the point of view of the tenant at all. In the present case, however, there is no such allegation by the petitioner, nor is here any indication in the order, on the face of it, to show that the needs of the landlord alone were considered by the State Government. The words used in the order are: "Nyaya ki drishtise uchit samajhte hain." In other words, the order had been passed "in the interests of justice." This is the type of the order which is, to borrow the phrase used by Lord Sumner in *Rex v. Nat Bell Liquors* (1922) A.C. 128, "like the inscrutable face of a sphinx," in other words a non-speaking order.

It is not open to the High Court, in proceedings under Article 226 and without any further enquiry, to pierce, or go behind, the language of an inscrutable or non-speaking order or to presume that matters which should have been considered were not. It is for the petitioner, in proceedings under Article 226, to make out a prima facie case which will enable the Court to ask the respondent to show cause against it. But the petitioner has not placed any material to impugn the legality or validity of the order passed by the State Government,

6. It is somewhat unfortunate that, due to the interference of the State Government, the petitioner finds himself in a position under which his old established business may have to be shifted to another place but the Court is powerless to interfere with an order which has been passed without violation of the law.

7. The petition is, therefore, rejected but the parties will bear their own costs.