

(1981) 08 AHC CK 0040

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No, 9697 of 1979

Rai Chand Chhajar

APPELLANT

Vs

District Judge, Mirzapur and others

RESPONDENT

Date of Decision : 20-08-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16

Citation : (1981) 08 AHC CK 0040

Hon'ble Judges : N.D.Ojha, J

Final Decision : Disposed Of

Judgement

N. D. Ojha J.

Respondent No 3. Smt. Indira Devi made an application before the Prescribed Authority Mirzapur on 1811977 for release under Sec. 16 of the U. P. Urban Building (Regulation of Letting, Rent and Eviction) Act 1972 (hereinafter referred to as the Act) in respect of a part of the accommodation in occupation of the petitions on the ground that the said accommodation was deemed to be vacant under Section 12 of the Act. It was asserted by her that she needed the aforesaid accommodation for her own use. An Inspector of the department was required to submit a report by the Prescribed Authority. After a perusal of the report submitted by the Inspector, and the material placed by respondent No 3, the Prescribed Authority dismissed the aforesaid application on 2291977. Respondent No. 3 made an application on 2991977 with a prayer that the order dated 229 1977 may be reviewed and the said accommodation may be released in her favour. This application was allowed by the Prescribed Authority on 2161978. The petitioner made an application on 581978 for setting aside the order dated 2161978 on the ground that the said order had been passed behind the back of the petitioner without any notice being served on him. The said application was, however, dismissed by the Prescribed Authority on 721979. The petitioner filed a revision against that order which was dismissed by the District

Judge Mirzapur on 27111979 on the ground that it was not maintainable. The orders dated 2161978 and 781979 passed by the Prescribed Authority and the order dated 27111979 passed by the District Judge are sought to be quashed in the present writ petition.

It has been urged by counsel for the petitioner that after purchasing the house in question respondent No. 3 made an application under Section 21 of the Act for release of the said house in her favour on the ground that she needed it bona fide for her own use. The said application was contested by the petitioner and was dismissed by the Prescribed Authority on 18111974. An appeal preferred by respondent No 3 against that order was dismissed on 2621976. The aforesaid two orders were challenged in a writ petition before this Court which too was dismissed on 8101976. It was only thereafter that the application dated 1811977 was filed. It has been pointed out that, respondent No. 3 suppressed in the application dated 1811977, even though the said application had been made shortly after the dismissal of the writ petition in respect of the earlier proceedings under Section 21 of the Act, the fact that an application under Section 21 had been made by her as well as the orders passed on the said application. Indeed, an effort was made by respondent No. 3 to bypass those orders. It was also urged by counsel for the petitioner that, it is apparent from the copy of the release application filed as an annexure to the rejoinder affidavit and the orders passed thereon by the Prescribed Authority and the District Judge, that the said application had been made in respect of the entire house which was purchased by respondent No. 3 on 281971 and her need having been found not to be bona fide in the proceedings, the application for release made on 1811977 was on the face of it, not maintainable, it not having been stated therein that some new facts have intervened after the dismissal of the release application under Section 21 of the Act which made the need of respondent No. 3 bona fide notwithstanding the earlier orders.

The next submission made by counsel for the petitioner was that the application dated 1811977 having been dismissed on 2291977, the review application filed on 2991977 on which the impugned order dated 2161978 was passed by the Prescribed Authority was not maintainable inasmuch as there was no provision authorising the Prescribed Authority to entertain an application for review against an order such as was passed on 2291977. Lastly, it was urged that even though the application made by the petitioner on 581978 for setting aside the order dated 2161978 was accompanied with an affidavit and no counter affidavit was filed by respondent No. 3, the Prescribed Authority chose to still dismiss the said application on 721979. The order of the Prescribed Authority accordingly suffered from a manifest error of law and deserved to be quashed on this ground also.

For the respondent No. 3, it has been urged by her counsel that since neither the Prescribed Authority nor the District Judge had gone into the question as to what was the effect of the application under Section 21 of the Act being dismissed, it was not open to the petitioner to challenge the impugned orders on the basis of

the orders passed in proceedings under Section 21. It was also urged by him that simply because no mention was made in the application dated 1811977 about the order passed on the application under Section 21 of the Act, it could not be said that the petitioner had not come with clean hands. Regarding the power of the Prescribed Authority to review its earlier order dated 2291977, it was urged by counsel for respondent No. 3 that the said authority was entitled to entertain an application for review under its inherent powers. In the alternative, it was urged that the application which was made by respondent No. 3 on 2991977 was really treated by the Prescribed Authority as a second application for release and, as such even if no power of review vested in the Prescribed Authority, the order passed by it on 2161978 was within its jurisdiction. In regard to the submission made by counsel for the petitioner that no counter affidavit had been filed by respondent No. 3 to the affidavit filed on behalf of the petitioner in support of the restoration application dated 581978, it was urged by counsel for respondent that no copy of the said affidavit appears to have been served on respondent No. 3 and, as such, no counter affidavit could be filed.

Having heard counsel for the parties I am of opinion that the impugned orders cannot be sustained and deserve to be quashed. Even if the orders passed in proceedings under Section 21 of the Act are not taken into consideration and likewise the conduct of the petitioner in not mentioning those orders in her application dated 1811977 is ignored. I am of opinion that the impugned orders cannot be sustained being without jurisdiction. A copy of the application dated 1811977 has been filed as annexure 1 to the writ petition. This application purported to have been made under Section 12 of the Act. Not only that the provision under which the said application had been made mentioned to be Section 12 of the Act, even in the body of the application it was stated that the portion of the building in respect of which the application was made would be deemed to be vacant under the said Section 12. As already pointed out above, an Inspector was required to submit a report and respondent No. 3 was permitted to produce evidence in support of her case that the portion of the building in respect of which the application had been made was to be treated as vacant and also in regard to her need being bona fide. After taking into consideration the report of the Inspector and the evidence produced by respondent No. 3, the then Prescribed Authority dismissed the application dated 1811977 by its order dated 2291977 holding that the respondent No. 3 had failed to establish either that the portion of the building in respect of which the application had been made was vacant or that her need was bona fide. The submission made by counsel for respondent No. 3 that the said application was not dismissed on merits but was dismissed on the ground that for lack of evidence it was not possible to record any finding, cannot be accepted on a plain reading of the order dated 2291977. In the said order the report of the Inspector has been considered and so has been considered whatever evidence the respondent No. 3 chose to produce in support of her case. The Prescribed Authority was of the view that respondent No. 3 had failed to produce any cogent

evidence to substantiate her case. The application was dismissed on this ground, as is apparent, not only from the tenor of the order but also from the operative portion thereof.

The question which, therefore, arises for consideration is whether the application made by respondent No. 3 on 29/9/1977 for review of that order was maintainable. Before advert to the relevant provisions of law in this behalf I wish to deal with the submission made by counsel for respondent No. 3 in the alternative that the said application has been allowed by the Prescribed Authority not as a review application but as an independent second application for release. This submission, in my opinion, cannot be accepted even on a plain reading of the order dated 21/6/1978. The Prescribed Authority has started by saying that the application which was being disposed of by that order was application for review which had been filed before his predecessor in office. At this place it may be mentioned that the order dated 22/9/1977 was passed by an officer other than the officer who passed the impugned order dated 21/6/1978. The application which was made by respondent No. 3 on 29/9/1977, a copy whereof has been filed as annexure 3 to the writ petition, also leads to the same conclusion that it was only an application for review and not a second application for release. It appears from this application that the application dated 18/1/1977, made by respondent No. 3, had been numbered as case No. 2 of 1977. The application dated 29/9/1977 was made in case No. 2 of 1977, as is apparent not only from the heading of the application but also from the opening paragraph thereof. A perusal of the said application particularly of paragraphs 1 and 3 thereof makes it abundantly clear that what the petitioner wanted was to have the order dated 22/9/1977 passed on her application dated 18/1/1977 reviewed on the basis of the same material, namely, the report of the Inspector and the evidence already produced by her. Even the prayer in that application, in unequivocal terms, was to review the order dated 22/9/1977 and to allow the application for release. For these reasons, it is difficult to accept the submission made by counsel for respondent No. 3 that the order dated 21/6/1978 should be treated as an order not of review but on a fresh application for release. The mere fact, that in the operative portion of the order dated 21/6/1978 it has not been specifically stated that the order dated 22/9/1977 is being reviewed, is in the circumstances pointed out above, of no consequence. It is the substance which matters and not the form.

That the Prescribed Authority while dealing with an application under Section 16 read with Section 12 of the Act exercises a quasijudicial power admits of no doubt. It is settled law that power to review a judicial or quasijudicial order is creature of Statute and has to be specifically provided for. In the absence of any such express power the Prescribed Authority cannot review his previous order and if does so his order can be quashed under Article 226 of the Constitution. If authority were needed for this proposition of reference may be made to *Harbhajan Singh v. Koran Singh* A.I.R. 1966 S.C. 641.

Coming to the provisions of the Act and the Rules framed thereunder, it would be

seen that in respect of an order dismissing an application for release under Section 16 on the ground that the landlord had failed to establish that the accommodation in respect of which the release application had been made was vacant and that her need was bonafide, no provision for review has been made. Section 34 of the Act and Rule 22 framed thereunder make certain provisions of the Code of Civil Procedure applicable to the proceedings under the Act and the District Magistrate, the Prescribed Authority or any appellate or revising authority for the purposes of holding an inquiry or hearing any appeal or revision under the Act are empowered to exercise the powers conferred by those provisions. Order 47 Rule 1 which provides for review has not been included either in Section 34 of the Act or in Rule 22 of the Rules. Where a power of review was sought to be conferred, it has been specifically conferred, as is apparent from Section 16 (5) (a) of the Act which reads;

"Where the landlord or any other person claiming to be lawful occupant of the building or any part thereof comprised in the allotment or release order satisfies the District Magistrate that such order was not made in accordance with clause (a) or clause (b), as the case may be, of subsection (1), the District Magistrate may review the order."

Subsection 5 (a) of Section 16 has no application to this case. That provision contemplates a review of an order of allotment or release at the instance of the landlord or any other person claiming to be lawful occupant of the building or any part thereof comprised in such order of allotment or release. In the instant case the petitioner never wanted review of any order either of allotment or of release. In this view of the matter the Prescribed Authority did not have any jurisdiction to entertain the application dated 29/9/1977 made by respondent No. 3 for review of the order dated 22/9/1977. The order dated 21/6/1978 passed on the said review application is accordingly without jurisdiction. Coming to the submission made by counsel for respondent No. 3 that the Prescribed Authority had inherent jurisdiction to entertain an application for review, suffice it to point out that no order passed by a judicial or quasi judicial authority, can be reviewed under the so-called inherent powers after reappraisal of the evidence on the basis of which the order sought to be reviewed was passed or even on the basis of additional evidence. Reference in this connection may be made to the decision of a Division Bench of this Court in Jagdish Prasad v. District Board A.I.R. 1966 All. 26 para. 12.

In my opinion, there is substance even in this submission made by counsel for the petitioner that no counter affidavit having been filed to the affidavit on behalf of the petitioner in support of her application dated August 5, 1978, the Prescribed Authority should have accepted the uncontroverted statement made in the said affidavit and the order dismissing the application dated August 5, 1978 suffered from a manifest error of law. A Division Bench of this Court in Juggi Lal v. R. J. Gupta A.I.R. 1962 All. 408, held that where a Court had before it a duly sworn affidavit of the plaintiff in support of his

application under Order 9 Rule 9 for restoration of his suit dismissed for default of appearance and there was no counter affidavit in traverse of the allegations contained in that affidavit, it was not open to the Court to disbelieve the allegations of the plaintiff in the affidavit.

The impugned order dated 721979 deserved to be quashed on this ground also. However, the dismissal of the application made by the petitioner on 581978 by the Prescribed Authority on 721979 as also the dismissal of her revision by the District Judge on 27111979 on the ground that the revision was not maintainable lose their significance once it is held that the impugned order dated 2161978 passed by the Prescribed Authority itself was without jurisdiction.

In the result, the writ petition succeeds and is allowed and the impugned orders dated 2161978 and 721979 passed by the Prescribed Authority are quashed, In so far as the order dated 27111979 passed by the District Judge dismissing the revision on the ground that it was not maintainable is concerned, it is not necessary to quash the same in as much as, as already pointed out above, it loses its significance in view of the order dated 2161978 passed by the Prescribed Authority having itself been quashed. The petitioner will be entitled to his costs from respondent No. 3.