
(1980) 09 DEL CK 0049

In the Delhi High Court

Case No : Letter Patent Appeal No's. 31, 33, 34, 35, 36, 37, 38 and 39 of 1970

S. Jagjit Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-09-1980

Acts Referred:

Citation : (1980) ILR Delhi 1139

Hon'ble Judges : S.B. Wad, J; A.B. Rohtagi, J

Bench : Division Bench

Advocate : B.S.C. Singh and H.P. Sharma, for the Appellant;

Judgement

S.B. Wad, J.

(1) These eight appeals are filed by the tenants allotted against the order of the Single Judge passed on March 12, 1970, dismissing their writ petitions. The appeals are primarily directed against the order of the Chief Settlement Commissioner cancelling their allotment on the ground of habitual default in payment of rent. The orders were passed u/s 19 of the Displaced Persons (Compensation and Rehabilitation) Act 1954 read with Rule 102(d) of the Rules framed under the said Act.

(2) The appellants were inducted as tenants, on various dates in 1947, by the then Sikh owners of property known as 7, Jantar Man- tar Road, New Delhi. 3/5 share of the property was sold to some Muslims in 1951, who were later on declared as evacuees. That share, Therefore, vested in the Custodian in 1953. The other 2/5 share was acquired in 1956. The entire property went under the control of the Managing Officer in 1956, and the appellants became allottees u/s 14 of the Act. In 1959. 7 Jantar Mantor Road was transferred by private negotiations to A.I.C.C. There is some dispute as to who is the real owner of the property A.I.C.C. or the Government. One fact is clear that till this day no sale-deed (or sale certificate) is made in favor of the A.I.C.C. One of the contentions of the appellants is that A.I.C.C. is illegally using the government machinery

under the Displaced Persons (C&R) Act, 1954 to evict them. We are told that some suits we're also filed claiming ownership of the suit property by two factions of the Congress party. However, for the purposes of this appeal we assume that the property is still in the compensation pool as no sale deed (or sale certificate) has yet been made in favor of the A.I.C.C.

(3) The appellants can be divided in two main groups. Those against who eviction proceedings were started by giving show cause notice u/s 19 read with Rule 102(d) and the allotments cancelled. And those against whom, initially, proceedings were started to recover the arrears of rent by a coercive process u/s 21, but afterwards, orders of cancellation of allotments were passed. Admittedly, in the second case, show cause notices under rule 102(d) were not given. Notices of demand of arrears of rent were also not given to any of these eight appellants. Some of these eight appellants had ascertained registered claims in their favor. The claims of arrears of rent are for the period between 1947 to 1961-62. Some of them immediately paid the arrears after the proceedings were started. Others who had a registered claim requested for adjustment against their claim. The current rent is being deposited in the court under the orders of the Bench admitting the appeals. The learned Judge, while dismissing the writ petitions, recorded the following findings

(1)Section 19 confers absolute power on the authorities to cancel allotments. (2) Rule 102(d), insofar as. it requires a show cause notice to be given (before an allotment is cancelled) is ultra virus of section 19(3) Assuming that Rule 102(d) is intra vires , the requirement of natural justice was complied with before cancellation orders were passed. (4) The allotments were cancelled on the ground of habitual default in payment of rent. For determining whether there is habitual default or not, it was not necessary to inform the allottees what were the exact arrears, or to make a demand of payment of arrears from the allottees. So also the date of the acquisition of the suit property in the compensation was irrelevant.

(4) The first question for determination is whether cancellation of allotment can be affected without show cause notice u/s 19 read with Rule 102. We may note the said provisions.

SEC.19 : "Power to vary or cancel lease or allotment of any property acquired under this Act (1) Notwithstanding anything contained in any contract or any other law for the time being in force but subject to any rules that may be made under this Act, the managing officer or managing corporation may cancel any allotment or terminate any lease or amend the terms of any lease of allotment under which any evacuee property acquired under this Act is held or occupied by a person, whether such allotment or lease was granted before or after the commencement of this Act." Rule 102 "Cancellation of allotments and leases A managing officer or a managing corporation may in respect of the property in the compensation pool entrusted to him or to it, cancel an allotment or terminate a lease, or vary the terms of any such lease or allotment if the allottee or leasee,

as the case may be : (a) has sublet or parted with the possession of the whole or any part of the property allotted or leased to him without the permission of a competent authority, or (b) has used or using such property for a purpose other than that for which it was allotted or leased to him without the permission of a competent authority, or (c) has committed any act which is destructive of or permanently injurious to the property, or (d) for any other sufficient reason to be recorded in writing : Provided that no action shall be taken under this rule unless the allottee or the leasee, as the case may be, has been given a reasonable opportunity of being heard."

The learned Judge held that no show cause notice was necessary for cancellation of allotment. He went as far as to hold that Rule 102 was ultra virus of section 19. This was not pleaded by either party. Indeed, Government could not have taken a stand that its own Rules were illegal and invalid. We do not agree with the learned Judge. natural Right to be heard is an effective check on arbitrary decision-making. The Supreme Court has now held in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and Another, that principles of natural justice apply even to administrative decision-making. The Supreme Court has further held that they would read this requirement in the rules even if they are silent.

(5) The learned Judge has held that Rule 102 was ultravires of Section 19 on the ground that Section 19(1) confers absolute power on the authorities to cancel allotment. He has compared these powers with the powers of a private landlord under the Transfer of Property Act. We feel that this approach and interpretation of the learned Judge is patently erroneous. Section 19 expressly states that these provisions were subject to the Rules framed under the Act. Besides requirement of show cause notice is also provided in sub-sections 2 and 3 of Section 19. We hold that the provision of show-cause notice in Rule 102 is mandatory. The cancellation of allotments without giving a show clause notice under Rule 102 is, Therefore, illegal and invalid.

(6) It is also difficult to endorse the finding of learned Judge when he holds that Rule 102 is complied with (on the assumption that the Rule was intra vires). He assumes [contrary to the notice under Rule 102(d) that cancellation was ordered only for non-payment of rent. Then the learned Judge holds that requirements of clauses (a) (b) and (c) of Rule 102, which according to him are akin to this ground, are complied with. Elsewhere the learned Judge has held that non-payment of rent was not the ground for cancellation, but habitual default was the real reason. The whole approach is self- contradictory and erroneous. The learned Judge has then held that the requirement of natural justice was complied with because before the eviction order was passed the allottees were heard by the appellate authorities. The learned Judge has further held that an opportunity of being heard is necessary only at eviction stage and not at the stage of cancellation of allotment. We are constrained to disagree. If allotment is cancelled for any of the defaults mentioned in Rule 102, eviction would automatically follow. Authorities would immediately move in by use of force.

Such coercive action is permissible under the Act. Opportunity to be heard at the stage of eviction would thus be an empty formality.

(7) The learned Judge has then held that the impugned orders were justified as the appellants were habitual defaulters. Clause (d) of Rule 102 does not mention habitual default as a ground for cancellation. The real question, Therefore, was whether "habitual default" was a sufficient reason within the meaning of Rule 102(d) and whether the appellants had at all committed any default.

(8) But the learned Judge has not drawn on that clause because he had already held that Rule 102 was ultravires. He has relied upon general principles of law relating landlord and tenant under the T.P. Act. We have already held that Rule 102 is valid and mandatory. We, Therefore, proceed to decide the matter under that provision. The words "habitual default" are not defined in the Rules. The Rules also do not lay down whether rent is to be paid in advance every month or by a particular date. We do not know whether there was any such term in the allotment orders. The counsel for the Respondents has not relied on the allotment orders. The statements of payments filed by Respondent No. 1 on the court's direction show that sometimes no payments were made in a given month. But subsequent payments were accepted without any demur. Where notices u/s 102 were given, no facts or particulars of irregular payment were stated.

(9) The proper procedure according to us is, that the authorities must first serve a notice of demand of rent/arrears of rent, on the allottee. They must be given an opportunity to make payment. be adjusted against the claim with an intimation to them. If an allottee fails to make payment, a show cause notice should be served Where they have a registered claim the amount of arrears should on him. If he fails to show cause or does not give satisfactory reply a cancellation order should be passed. Such an order should be speaking order recording the reasons. Unless a demand for patent is made and an opportunity is given to make payment a person cannot be said to be in default. In this case, no such opportunity of making payment was given. There is, Therefore no default, much less a habitual default. Therefore, even if it is assumed that habitual default can be a "sufficient ground" for cancellation under Rule 102, the allotments could not have been cancelled in the present case.

(10) The statement of defaults in payment filed by respondent No. 1 further shows defaults from 1947 to 1961. Repelling the appellants' submission, the learned Judge has held that although the property was finally acquired only in 1956, defaults prior to that period could be considered. The learned Judge has also held that what were the exact arrears or what payments were made by the tenants or whether some of the appellants had ascertained claim or not. were not relevant facts at all. He has held that the question of habitual default can be decided independently of these facts.

(11) We are of the opinion that the Managing Officer was not competent in law to

recover rent for the period prior to the acquisition of the whole property in 1956. So also the said period cannot be taken into account for holding that the appellants were habitual defaulters. In both the categories of cases actions were initiated primarily on the ground of arrears of rent. We may take the show cause notice in Appeal No. 31 of 1970 (Annexure II) as a typical instance. The notice states :

" And whereas a sum of Rs. 219.19 np. is due from you as on the 1st day of May 1961 as arrears of rent in respect of the said premises; And whereas your habitual default in payment of rent as and when it accrued due and you being in arrears of rent for a long period and sufficient reasons to cancel the allotment of the said premises in your favor ; And whereas it is accordingly proposed to cancel the said allotment for the reasons aforesaid"; Immediately after receiving the notice, the appellant informed the Managing Officer to adjust the sum of Rs. 219.19 np. against his compensation claim bearing registration No. D/KM/193485/21. No reply was sent by the Managing Officer. The appellant, Therefore, separately deposited Rs. 219.19 np. with the Managing Officer. The learned Judge held that compensation claim and liability to pay rent under a contract, are two independent legal obligations. The learned Judge failed to notice that on the very day of the notice (24-5-1961) the Managing Officer had already adjusted arrears of Rs. 923.81, against the compensation claim of the appellant. There is a great deal of substance in the appellant's allegation that Rs. 219.19 were deliberately not adjusted to show that the appellant was in default. A Managing Officer under the Act holds the property in trust for promoting the interest of displaced persons. He is not expected to act in an arbitrary and whimsical manner. We have no hesitation in holding that the cancellation of allotments was arbitrary and illegal."

(12) After the transfer of the property to A.I.C.C. in 1959, the Managing Officer, on 31-12 59, informed one of the tenants that "the property occupied by you stands transferred to A.I.C.C. by negotiation and as such this office cannot sanction repair charges". Appellants could not be expected to know the legal niceties of a sale certificate for completion of the title. Managing Officer did not clarify the position nor sent a notice of demand to any of the appellants. In these circumstances, suddenly cancelling the allotments was unjust. The appellants are in lawful possession for more than thirty years. Some of them are displaced persons.

(13) For these reasons we set aside the orders of cancellation of allotment. This court had earlier ordered the tenants to deposit rent in the court month to month. Counsel for the respondents has not brought to our notice any default in this regard. The appeals are allowed with costs.