(1975) 04 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7007 of 1974

Santosh Kumar Tikmani APPELLANT

Vs

Jafar Ali, District Magistrate and Others RESPONDENT

Date of Decision : 10-04-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 97
Constitution of India, 1950 — Article 19(1), 226, 37, 39
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7, 7(1), 7(2), 7C
Uttar Pradesh Excise Rules — Rule 2, 5
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 16, 21(1)

Citation : (1975) AWC 268

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hari Swarup, J.—This petition has been filed for quashing an order of allotment passed u/s 7(2) of the U.P. (Temporary) Control of Rent and Eviction Act (hereinafter called the Act). On 29-9-70 in favour of the Excise Inspector and an order of the District Magistrate dated 22-10-74 by which he requested the Superintendent of Police Mainpuri to provide police assistance for restoring and maintaining the status quo ante as it existed before 10-9-74 and to restrain the present Petitioner from interfering with the possession of the excise licensee running the liquor shop. The order also directed that the F.I.R. against the Petitioner and others lodged on 10-9-74 at police station Shikohabad should be proceeded with and the investigation completed without delay. A Writ in the nature of Mandamus is also claimed to restrain the Respondent from interfering with the rights of the Petitioner and for restoration to him of the possession over the shop in dispute in the form as it stood in 1974.

2. The facts giving rise to the present petition are as under:

There is a shop in which the business of vending liquor was carried on by the licencee under the Excise Act. The people of the locality did not like it and some residents including father of the present Petitioner sent a telegram to the District Magistrate on 4th April 1970 that the shop may not be allotted to the next licencee. The licence for vend of liquor commences from 1st of April every year and ends on March 31 next year. One Pearey Lal Arora was the tenant of this shop and was running the liquor business in the year 1969-70; for this year he was the liencee. Since April 1970 licence was given to Girraj Saran Singh for one year. In subsequent year also he being the highest bidder was given licence and he continued to carry on the sale in the shop in dispute. On 12-5-70 the present Petitioner purchased this building and on 15th July 1970 filed a suit in the court of the Munsif, Shikohabad against Pearey Lal Arora whose contract had already come to an end. The Petitioner also impleaded Girraj Singh alleging him to be the sub-tenant of the shop and made this alleged sub-tenancy as a ground for eviction of Pearey Lal Arora.

3. On 21-9-1970 the Rent Control and Eviction Officer passed an allotment order u/s 7(2) of the U.P. (Temporary) Control of Rent and Eviction Act allotting the shop in the name of the Excise Inspector for the purpose of the shop being used for vend of liquor by the licencee. u/s 7-C of the Act, rent was also deposited on behalf of the Excise Inspector. On 6-5-1972 the Petitioner filed an objection in 7-C proceedings Before this on 9-12-1970 Girraj Saran Singh had filed a written statement in the suit and had brought out the fact in the written statement that allotment in the shop had been made in favour of the Excise Inspector and Girraj Saran Singh was carrying on business of vending liquor in this shop as tenant. Inspite of this fact being brought to the notice of the Petitioner he did not get the plaint amended to seek relief against the Excise Inspector or against Girraj Saran Singh in his capacity as a licencee on behalf of the Excise Inspector or as a person claiming to occupy the shop in his own right as tenant. After 31st March 1972 the licence in favour of Girraj Saran Singh also came to an end and Ram Gopal became the licencee. He continued vending of liquor in this shop since obtaining of the licence. The suit, however, continued as it was fired, and the present Petitioner obtained an exparte decree on 16-11-1973 against Pearey Lal Arora and Girraj Saran Singh.

4. The decree was sought to be executed as against the judgment debtors in the decree even though the shop was in the occupation of Ram Gopal and he was carrying on business under a licence from the Government. On 23-8-1974 the decree was sought to be executed for delivery of possession as against the judgment-debtors, but it was not actually executed. An application was filed in the Execution Court by the decree holder to the effect that the judgment-debtors had refused to deliver possession and it was necessary that the police aid be given to break open the locks and to deliver possession. The report of the Amin however was different. According to the Amin''s report resistance was put by the employees of the contractor, and that they had refused to deliver the possession. In the face of the facts mentioned above the affidavit filed by the present

Petitioner in the execution proceedings was obviously false. The licence was given under the Excise Act by open acution. The auction is published and people always come to know of it was, also known to the Petitioner that the rent was being deposited u/s 7-C of the old Act on behalf of the Excise Inspector by the new licensee. It cannot be taken that the Petitioner was unaware of the fact that neither Pearey Lal Arora nor Girraj Saran Singh were the contractors carrying on the business on the date of execution. His affidavit accordingly filed before the Execution Court cannot particularly in view of the report of the Amin, be taken as containing any thing but falsehood.

5. It appears that the Execution Court also did not follow the law in allowing the decree-holder''s application and directing the police aid for delivery of possession After the Amin''s report the court should have acted under Order 21 Rule 97 CPC and should have issued notice to the contractor who was carrying on the business and then after summoning him and the Inspector the court should have passed the necessary orders. It appears that the court was misled by the affidavit filed by the present Petitioner to the effect that the judgment debtor was resisting the delivery of possession. It was in such circumstances that the order of the Civil court was passed for delivery of possession in execution of the decree with police aid. The execution was then taken on 10th September 1974, which happened to be Tuesday, a day on which the Excise shops remain closed. On that date the Petitioner with the help of the Amin and his employees got the lock of the shop opened, threw out the material and also caused substantial damage to the building. According to the Petitioner himself he demolished the building, pulled down the roof and also the walls. When such a high handed action was taken by the Petitioner under the garb of law, the Excise Inspector and the Excise contractor approached the District Magistrate for protection. The District Magistrate gave them protection and helped the contractor and continue to vend the liquor at that place it appears that subsequently the broken walls were re-constructed and the roof was remade. This was done after the District Magistrate passed the impunged order on 22 10-1974. The District Magistrate in this order directed that the police should protect the vending of liquor in the shop in dispute from the highhanded action of the Petitioner. Against this order and the earlier allotment order in favour of the Excise Inspector the present writ petition has been filed.

6. In this Court learned Counsel for the Petitioner has firstly contended that the order of allotment was invalid for various reasons, and as it was invalid it could be treated as nullity by the Petitioner and after having obtained possession through civil court in execution of the decree he had the right to demolish the b aiding and to occupy the site. According to him the District Magistrate had no authority to deal with the matter under any law and could not use the State Machinery for dispossessing the Petitioner.

7. Before the Petitioner can however, be permitted to challenge the orders of the District authority through a petition under Article 226 of the Constitution, he has

to justify his own conduct. A man whose hands are tarnished with illegitimate acts, fraud and destruction of property cannot approach this Court for any relief for the protection of the rights claimed on the basis of those very acts. The present Petitioner, as the evidence discloses, obtained ex parte decree against persons who had no subsisting interest in the property, did not implead persons who had interest, filed a false affidavit before the execution court for getting police aid and then destroyed the property which was in occupation of a person on behalf of the Excise Inspector under an allotment order and in which he was carrying on a regular business. Such a person cannot approach this Court for the relief to validate his high-handed action.

8. Learned Counsel for the Petitioner has contended that the order of allotment is bad because (1) there was no vacancy existing on the date of the Order; (2) allotment order could not be made u/s 7(2) of the Act in favour of the Excise Inspector to let a third person carry on business in the premises; (3) allotment made was on the directive issued by the State Government and there was no application of mind by the Rent Control and Eviction Officer to the circumstances of the case; (4) the order of allotment was not communicated to Petitioner; (5) no notice prior to the allotment was given to the Petitioner; (b) allotment order did not direct the Petitioner to give property on lease to the Excise inspector.

9. In the present case it is not even necessary to consider the validity of the order of allotment in view of the conduct of the Petitioner mentioned above and the inordinate delay made by him in challenging that order. The order was passed as far back as on 21-9-1970 the Petitioner had come to know about this order on 9-12-1970 when the written statement of Girraj Saran Singh was filed and subsequently when proceedings u/s 7-C of the Act were started. He never challenged the validity of that order till this petition was filed and he had tried to make it infructuous by demolishing the building. Now it is too late to permit the Petitioner to challenge that order.

10. There is also no merit in the contentions of the learned Counsel regarding the validity of the order. The shop was in the occupation of Pearey Lal Arora, admittedly as a tenant. His licence came to an end on 31st of March, 1970, and the shop had become vacant on his going out, and as no allotment order or release order had been passed in respect of the shop in dispute till 21-9-1970, allotment order could have been passed on that date. The Rent Control and Eviction Officer, accordingly, had jurisdiction, to pass the order The telegram sent by the Petitioner''s father as mentioned above shows that it was known to him that the shop was going to be allotted for the purpose of vending excise liquor and for letting the liquor business continue in that shop. The Petitioner never appeared to object before the Rent Control and Eviction Officer about the grant of the allotment order. A landlord can complain about the allotment order only if he files an application for release of accommodation in his favour or nominates a tenant in case allotment is made within the prescribed time. In the present case no such application was made. It was thus open to the Rent Control and Eviction

Officer to make the allotment in favour of the Excise Inspector. The order indicates that the allotment of the shop is in favour of Excise Inspector, the purpose of letting has been described as vending of liquor through the Excise contractor. Such an allotment order cannot be deemed, ex-facie, as null and void and cannot be disregared by a landlord.

11. There is also no merit in the contention of the learned Counsel that allotment was made by the Rent Control and Eviction Officer without application of mind. The State Government had given only a directive that instead of letting the shop to the Excite contractor, it may be let out in the name of the Excise Inspector. Whether the shop should have been allotted to the Excise Inspector or to some body else is not relevant in this case as no one came forward to claim his right to get the shop alloted to him and the Petitioner had never applied for the release of the, property. Under Rules 2 and 5 of the U.P. Excise Rules the location site of the shop for vending the liquor has to be fixed, Liquor cannot be allowed to be sold at every place. The Collector has to determine a particular site. Admittedly this shop was being used for the vending of liquor since much before the Petitioner came into the picture by purchasing the building, and normally it had to be used for the same purpose. The absence of notice to the landlord prior to the allotment can also not by itself make the allotment order invalid as there is no specific provision in the Act providing for a pior notce. Moreover it was the duty of the landlord himself to intimate the District Magistrate or the Rent Control and Eviction Officer u/s 7(1) of the Act about the vacancy. The Petitioner himself was guilty of not giving any information to the District Magistrate, he cannot now challenge the order because no prior notice was given to him, particularly, when he never intended to apply for the release of the shop. Similarly though the communication of the order of allotment to the landlord is normally necessary its non-communication will not invalidate it, particularly when the landlord had full knowledge of it and the allottee had entered into possession. Tenancy comes into existence on the passing of the allotment order and the occupation of the premises by the allottee. In the present case after the allotment order was passed the nominee of the Excise Inspector entered into possession, rent u/s 7-C was regularly deposited, no objection was raised to the occupation of the shop by the Excise Contractor, the tenancy must therefore be deemed to have come into existence from the date of the occupation by the allottee nominee. In the present case there is nothing to show that the landlord had ever resisted the occupation of the shop by the nominee of the Excise Inspector or objected to his carrying on the business in the shop. None of the grounds, therefore, raised by learned Counsel are such as may make the order of allotment null and void.

12. Even if the allotment order was invalid the occupation admittedly was of the contractor, Respondent No. 5 who was running the liquor shop. There is no decree passed against him, and he could not be ousted from the shop without a decree of the Civil Court even if he was holding the premises under an invalid allotment order. The Petitioner could have only instituted a suit against the

occupant for his eviction and then could obtain possession by executing the decree. He could not take the law in his own hands and throw out the occupant by force and hinder his occupation by demolishing the construction.

13. The act of demolishing the construction in the present circumstances cannot but be deemed an illegitimate act on the part of the landlord. No person has a right under law to destroy a property which is in the occupation of another. Where the enjoyment of a building has under law become vestead in other citizens, as in the case of building covered by the Act, it cannot without leave of the authority concerned be made the subject matter of destruction by the owner of the property. The term ''property'' has no absolute meaning. There may be private property in which the right of owner as well as the right of enjoyment may vest in an individual there may be other property in which the ownership may vest in one individual and the right of enjoyment may vest in another or in others including the owner. The present is the property of the third category, i.e. property in which ownership vest in the Petitioner but the right of enjoyment does not vest in him. The right to enjoy-a controlled property vests in the society and the member of the society actually entitled to enjoy it is the person in whose favour the building is allotted by the District Magistrate in exercise of powers u/s 7 of the U.P. (Temporary) Control of Rent and Eviction Act or u/s 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. By reason of the property being controlled by statutes, the landlord has lost the right of occupation and enjoyment of the property. If the accommodation falls vacant he can have the right of enjoyment only after he gets the release order in his favour from the District Magistrate. The property is such in which the right of enjoyment has become vested in all the citizens, and the landlord cannot deprive them of this right. A fortiorari, the landlord cannot either forcibly oust a person or destroy the property. Section 21(1)(a) and (b) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act also make this position clear. It provides:

21. Proceedings for release of building under occupation of tenant:

The prescribed authority may, on an application of the landlord in that behalf, order the eviction of tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely (a) that the building is bonafide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his faimly, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee or a public charitable trust, for the objects of the trust; (b) that the building is in a dilapidated condition and is required for purposes of demolition and new construction.

Clause (b) impliedly lays down that the landlord has no right to demolish a building which is habitable and not in a dilapidated condition. Even if it be in a dilapidated condition, the landlord cannot demolish it without obtaining permission from the District Magistrate. This rule is based on the principle that no body has a right to destroy the property which is of utility to the people.

14. Learned Counsel for the Petitioner has contended that every owner of the property has a fundamental right under Article 19(1)(f) of the Constitution to destroy property. According to him the words: ''to acquire, hold and dispose of property'' include the right to destroy the property. Learned Counsel in this connection cited the case of Rustom Cavasjee Cooper Vs. Union of India (UOI), . The passages he relied on in this case are in the judgment of Shah, J., which runs as under:

In its normal connotation ''property'' means the highest right a man can have to anything, being that right which one has to lands or tenements, goods or chattels which does not depend on another''s courtesy; it includes owner ship, estates and interests in corporeal things, and also rights such as trade marks, copy rights patents and even rights in personam capable of transfer or transmission, such as debts; and signifies a beneficial right to or a thing considered as having a money value, especially with reference to transfer or succession, and to either capacity of being injured.

Obviously this case does not explain the meaning of the words ''to acquire, hold and dispose of the property''. But it makes out that if out of the bundles of right constituting ''property'', any of it depends on the courtesy of another it would militate against the concept of ''absolute right of property''. Once the right to occupy a building depends on the courtesy of the District Magistrate the building itself ceases to be property in its widest sense.

15. Similarly the other case, relied upon, I.C. Golak Nath and Others Vs. State of Punjab and Another, , does not support his contention. Learned Counsel has referred to paragraph 172 in the judgment which reads as under:

There is no natural right in property and as Burke said in his Reflections, Government is not made in virtue of natural rights, which may and do exist in total independence of it.

There is quoted in the judgment a quotation of Noyes to the following effect:

Property is any protected right or bundle of rights (interest or thing) with direct or indirect regard to any external object (i.e. other than the person him-self) which is material or quasi material (i.e. a protected process) and which the then and there organisation of society permits to be either private or public, which is connoted by the legal Concepts of occupying, possessing or using.

These definitions go to show that the right to property is what is conferred on a person by law. These decisions do not support the contention of the learned Counsel that the words ''to acquire, hold and dispose of property'' include the right to destroy a property, the right of user where of vests in the society and is controlled under law by the Governmental authority and not the owner. As observed by the Supreme Court in Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj and Others Vs. The State of Gujarat and Others, :

No rights in an organised society can be absolute. Enjoyment of ones, rights must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests and there the Directive Principles of State Policy, although not enforceable in Courts, have a definite positive role introducing an obligation upon the State under Article 37 in making laws to regulate the conduct of men and their affairs.

The whole argument of the learned Counsel is thus, in the face of the observations of the Supreme Court, based, on a misconception of the right to property contemplated by Article 19(1)(f) of the Constitution.

16. Article 19(1)(f) of the Constitution confers on citizens right to acquire, hold and dispose of property, ''acquire'' refers to obtaining of dominion over property, ''hold'' gives the citizen the right to continue the dominion for its enjoyment, and ''dispose of contemplated the parting away of that dominion. A property may be disposed of by alienation, consumption, conversion or distraction. Alienation is done by transfer of dominion to another in accordance with law relating to transfer of property. Consumption means its enjoyment and utilization which will include even its final end, such as when bread is eaten. ''Conversion'' is transformation of property from one physical state to another as the conversion of sugarcane into sugar, molasses, etc., it may also include mere change of shape and form as the alteration of a building. ''Destruction'' is only a special form of conversion in which process the property loses its quality of enjoyability as such without making it tit for utilization in a different form, This will include such acts as the burning of foodgrains or throwing of sugar in gutter, the breaking to pieces the textile machinery or bull-dosing of a factory and will also include the pulling down of tenanted premises, as in each such instance the thing loses its utility-value without producing corresponding value-yielding property. Such a dealing with property unless it is in the public interest, is not envisaged by Article 19(1)(f) of the Constitution. Article 19(1)(f) confers on citizen no right to destroy property, destruction not being a concomitant of ownership.

17. Under the Constitution, every inch of Indian soil vests in the State, i.e. in the entire populance of the country. No individual has any absolute right in even a grain of Indian soil or superstructure or, for the matter of that, in any property whatsoever, except the right which he may acquire and have by virtue of a law. Under Article 19(1)(f) of the Constitution a citizen can acquire, hold and dispose of only such rights in property as are conferred on him by some law. It is basic that property is meant for enjoyment and can be destroyed only if the law directly or indirectly sanctions the destruction. Any concept to the contrary will lead to drastic consequences. A farmer may claim a right to destroy the entire food or industrial crop which he has raised, the book seller may claim the right to burn all his books, or a person, owning a factory may claim a right to demolish the factory. Such a right cannot be deemed to be a right vested in any owner of the property under the Constitution. The very preamble of the Constitution

speaks about justice. Social, economic and political; Article 39(b) contemplates that the ownership and control of the material resources of the community are to be so distributed as best to subserve the common good. The right to demolish a building meant for user by the people cannot, therefore, be deemed implied in the right of ownership particularly when that right has been specifically curtailed by Acts providing for control of Letting and Eviction.

18. Learned Counsel for the Petitioner has contended that the District Magistrate''s order was illegal because he passed the order under no specific provision of law. I need not go into the question because the action which the Petitioner had taken was itself illegal and the District Magistrate has only restored the status quo ante. More over, the District Magistrate has done only that which would have been done by the Civil Court in the present circumstances under Rule 101 of Order XXI of the Code of Civil Procedure. Rule 101 of Order 21 provides:

Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment debtor, it shall direct that the applicant be put into possession of the property.

The action of the District Magistrate cannot, therefore, be deemed to have brought about a situation which the law did not contemplate. No case has, therefore, been made out either in law or in equity for this Court''s interfering with the order of the District Magistrate.

19. The petition, accordingly, fails and is dismissed with costs.

