
(1956) 01 AHC CK 0011
In the Allahabad High Court
Case No : Civ. Misc. Writ No. 157 of 1955

Sheikh Rafiuddin	Vs	APPELLANT
The Government of U.P.		RESPONDENT

Date of Decision : 05-01-1956

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)(f), 226

Citation : (1956) 26 AWR 834

Hon'ble Judges : V.D. Bhargava, J

Bench : Single Bench

Advocate : M.H. Beg, for the Appellant;

Final Decision : Dismissed

Judgement

V.D. Bhargava, J.—This application Under Article 226 of the Constitution has been filed by one Sheikh Rafiuddin. The allegations in the petition are that the applicant is the Mutwalli and manager of Mori Masjid in the city of Aligarh and manages a number of shops attached and situate below the mosque. There was a tenant Abdul Rashid occupying one of these shops No. G3/360 and he fell in arrears of rent; he was likely to hand over possession surreptitiously to another person after getting pagri. The applicant informed the Rent Control and Eviction Officer about this fact and he claimed this shop personally for his own business. Later on suit No. 302 of 1952 was filed for ejectment of Abdul Rashid which was decreed on 28-5-1953 and on 8-5-1954 possession was delivered to the applicant through court. It was alleged that in October 1952 one Inder Nath also asked for the allotment of this shop but the Rent Control and Eviction Officer declined to pass the allotment order and only said that it. would be decided when the suit was decreed by the Civil Court and possession delivered to the landlord. The applicant claims himself to be the landlord of the premises.

2. On 10-5-1954 the applicant, as he alleges, by way of an abundant caution, filed an application for allotment of the shop to him. There were other applicants also for the allotment of this shop and among them was one Punjabilal opposite

party No. 2. He also applied on 8-5-1954 for allotment of this house to him. It was contended by the applicant that the shop was allotted to the said Punjabilal by the Rent Control and Eviction Officer on a false and fabricated report of the inspector and he also obtained an order u/s 7A(1) of the Rent Control and Eviction Act without any notice to the applicant. The applicant when he applied for a certified copy of the allotment order, it was not given to him. The applicant went up in revision before the Commissioner Agra-Rohilkhand Division and his application in revision was decided on 22-9-1954 by the Addl. Commr. who set aside the order of the Rent Control and Eviction Officer; that on 10-2-1955 the applicant received a notice from the Government of UP, opposite party No. 1, setting aside the order of the learned Addl. Commr. and he was given no opportunity of being heard. The applicant alleges that he is in possession of the shop and he is paying Rs. 25 as rent to the waqf. The applicant is using the premises for the purpose of this own business and in order to store the belongings of the mosque. The applicant challenges that the order of the Government of the UP cancelling the order of the Addl. Commr. was an unwarranted invasion of his fundamental rights and contrary to the principles of natural justice.

3. The grounds on which the order was challenged, inter alia, was that the order of the State Government was not authorised by any provisions of law and was ultra vires and also contrary to the principles of natural justice; that there was no provision authorising the passing of such an order and even if there be any provision it is void Under Article 19 of the Constitution that the order passed by the State Government is arbitrary and made without any consideration of law or justice.

4. It was prayed that this Court might by a writ of certiorari quash the order of the State Government.

5. The application is being contested both by Punjabi Lal as well as by the State Counsel on behalf of the State and the Rent Control and Eviction Officer. An affidavit of Vidhyadhar Mittal, who is Senior Inspector in the office of the District Supply Officer at Aligarh has been filed. It was alleged that the applicant himself has four shops three of which are quite close to the shop in question and these shops have been let out to the tenants on high rents. The applicant wants this shop also at control rent. It was denied that the allotment was made to Punjabi Lal without any opportunity being given to the applicant for being-heard or that the inspector himself made any false or fabricated report. On 2-6-1954 in the presence of Punjabi Lal and Mohiuddin, son of Rafiuddin applicant, the Rent Control and Eviction Officer ordered both of them to file their respective affidavits on or by 5-6-1954. On 4-6-1954 Punjabi Lal filed an affidavit where as neither the applicant nor his son Mohiuddin filed the affidavit either on the 4th or the 5th of June. The date mentioned in the inspector's report as 3rd June was an error for 2nd of June. As the applicant had filed no affidavit by the 5th of June the shop was allotted by the Rent Control and Eviction Officer to Punjabi Lal. It was

also denied that no copy of the allotment order was given. In fact a copy of the allotment order was given to the applicant through the copying department of the Collectorate, Aligarh on 29-6-1954. The Rent Control and Eviction Officer has also denied that the position of the applicant is that of a landlord. The applicant is landlord in the capacity of Mutwalli while the shop was wanted by him personally, not as mutwalli but as Rafiuddin; and, in any event, after enquiry the Rent Control and Eviction Officer came to the conclusion that the need of the applicant was not genuine and it was argued that this Court should not interfere with the order of the Rent Control and Eviction Officer.

6. The affidavit filed by Punjabilal also denied the correctness of the allegations of the applicant to the effect that he is possessed of a shop and that he did not need it for his personal use. The rent Control and Eviction Officer had in fact in the presence of the parties ordered both the applicant as well as the opposite party No. 2 to file their respective affidavits on or before the 5th of June, but no such affidavit was filed by the applicant.

7. The record of the Rent Control and Eviction Officer was summoned. From a perusal of the record it appears that the applicant represented before the rent Control and Eviction Officer that the need of Punjabi Lal was not a genuine one because he was already running a shop under the name and style of "Bengalidas Punjabilal" which belonged to Punjabilal and therefore he having already got a shop should not be allotted the shop. On the other hand the contention of Punjabi Lal appears to have been, that the applicant, Mutwalli, was not in need of the shop and the shop styled as "Bengalidas" was the exclusive shop of his brother with which Punjabi Lal had no concern. The shop was run under the name "Punjabi Lal Bengalidas" upto 1950 and thereafter the name of the firm was changed to "Bengalidas". He has been trying for a shop for a long time but has not been successful. The further content of Punjabi Lal was that the applicant had already got shops of his own which he has rented at high rents and in case he wants a shop for himself he can get one vacated.

8. Upon these allegations the Rent Control and Eviction Officer appears to have ordered that both parties should file affidavits in respect of their allegations. It appears that there is no order to that effect on the record. But I am satisfied from a perusal of the whole record that the applicant or some of his representative was present on the 2nd of June before the Rent Control and Eviction Officer who had alleged about Punjabi Lal having a shop styled as "Punjabilal Bengali Das".

9. I find that on 8-6-1954 the Inspector reported that that was the 30th day of the vacation of the shop; that on the previous day, i.e. 2-6-1954, (which has wrongly been written as 3-6-1955) a point was raised by the Mutwalli whether Punjabi Lal had a shop which was being run under the name of "Bengalidas Punjabilal." The report further says that this fact was decided by Punjabi Lal who was asked to submit an affidavit and the Mutwalli was told to produce his evidence to prove his allegation. In compliance with the order of the Rent Control

and Eviction Officer, Punjabi Lal had filed an affidavit in which he had made it clear that the shop styled as "Punjabilal Bangalidas" belonged exclusively to his brother. From a reading of the affidavit and the report together, it is apparent that this point must have been raised by the Mutwalli, and the Mutwalli, i.e., the applicant was not in a position to controvert that fact, and it seems that the applicant is not correct when he says that he had no intimation that he was required to file an affidavit or to produce evidence. Thereupon the Rent Control and Eviction officer on 8-6-1954 made an order to the effect that as the Mutwalli had failed to give a counter-affidavit while Punjabi Lal had given it, it went to show that the statement of Punjabilal was correct. The fact that applicant had other shops which he could get vacated if he wanted for personal use was also taken into consideration by the Rent Control and Eviction Officer while allotting the shop to Punjabi Lal.

10. In the circumstances, I see no principle of natural justice having been violated. There were two applicants among others, and if the Rent Control and Eviction Officer had preferred to allot the shop to Punjabi Lal after considering the circumstances of the case, it cannot be said that he had committed an error, or had acted against the principle of natural justice. Learned Counsel for the applicant placed reliance on Rules 4 and 6 of the Rules framed under the UP (Temporary) Control of Rent and Eviction Act of 1947. Rule 4 lays down:

If the landlord receives no notice from the District Magistrate within thirty days of the receipt by the District Magistrate of the intimation given by the landlord u/s 7(1)(a) the landlord may nominate a tenant and the District Magistrate shall allot the accommodation to his nominee unless, for reasons to be recorded in writing, he forthwith allots the accommodation to any other person.

11. I have perused the record and I do not find any intimation having been given to the Rent Control and Eviction Officer by the applicant as landlord, of the vacation of the premises. There are certain applications for allotment in the prescribed form by different persons who were desirous of having this accommodation and among them, is also one application by the applicant. That application was not dated by the applicant, but from the office endorsement it appears that it was filed on 10-5-1954. In event, the shop was actually vacated on 8-5-1954 and the allotment order was passed on 8-6-1954, and if the application by the applicant for allotment even be treated as an intimation by the landlord the allotment had been made within thirty days of that intimation and, therefore, no right would accrue to the landlord to make any nomination. It may further be noted that this option also seems to have never been exercised beyond the original application for allotment. I, therefore, think that Rule 4 has been violated.

12. Rule 6 provides:

When the District Magistrate is satisfied that an accommodation which has fallen vacant or is likely to fall vacant is bona fide needed by the landlord for his own

personal occupation the District Magistrate may permit the landlord to occupy it himself.

13. It is only when the landlord himself required the premises that the Rent Control and Eviction Officer should have given preference to the landlord. But here the applicant forgets the fact that when he made the application for allotment he did not make it in the capacity of a landlord. He possessed dual capacity, one as the mutwalli and the other his individual capacity. He was the landlord and Mutwalli, but he had not applied for allotment as a Mutwalli. He had asked for allotment to him personally as he wanted to carry on business not behalf of the waqf but in his individual capacity. Under the circumstances the applicant stood on the same footing as any other person desire us to have that shop allotted to him. Moreover, as I have already mentioned above, the Rent Control and Eviction Officer had taken into consideration the fact that he applicant had other shops also which he could get vacated if he wanted one for himself and, therefore, he was of opinion that it was not bona fide needed by the landlord. The applicant cannot, under the circumstances, take benefit of Rule 6 either the next contention of the applicant was that in any event, the order of the State Government setting aside the order in revision of the Additional Commissioner was bad. No opportunity was given to the applicant by the State Government to show cause in support of the order in revision and, therefore, the applicant urges that this Court should quash that order by writ of certiorari. In the case of *Narottam Saran Vs. Govt. of the State of Uttar Pradesh and Another*, it has been held that the order of the State government u/s 7(F) is of an administrative nature and is not a quasi-judicial one and cannot be set aside by a writ of certiorari. It was further held in that case that "The State Government is not required to give notice to the parties or to afford the opportunities to (sic) or to argue their case before it. In passing such a discretionary order the State Government does not act in a quasi-judicial capacity."

14. Under the circumstances it appears that it is not open to this Court to set aside this order by a writ of certiorari.

15. Learned Counsel next contended that he might be permitted to pray for a relief by a writ of mandamus for quashing that order and directing State Government to act according to law, and subsequently a writ application to that effect was filed.

16. Firstly, the applicant had not prayed for a writ of mandamus and I do not think that at this stage it would be advisable to permit him to ask the relief. Secondly, it being an administrative order, not guided by any rules, it is not possible for this Court to issue any direction to the State Government. Thirdly, the initial order of the Rent Control and Eviction Officer, which has been maintained by the State Government, cannot be said to be erroneous upon the face of it, nor was it passed ignoring the principle of natural justice.

17. Learned Counsel has not been able to show as to how the provisions of the

U.P. (Temporary) Control of Rent and Eviction Act (III) of 1947 are void and unconstitutional Under Article 19 of the Constitution.

18. In *Srimati Ram Katori v. The Rent Control and Eviction Officer Agra* 1953 AWR (H.C.) 309 a bench of this Court relying on *Ram Das v. The State of Uttar Pradesh* 1952 AWR (H.C.) 225 has held that the U.P. (Temporary) Control of Rent and Eviction Act (III) of 1947 is not inconsistent with the provisions of Article 19(1)(f) of the Constitution and is not void.

19. I, therefore, dismiss the application. Both the opposite parties are entitled to their costs from the applicant.