

(1955) 11 AHC CK 0057

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 694 of 1955

Shri Sheo Narain Lal

APPELLANT

Vs

The District Magistrate and Others

RESPONDENT

Date of Decision : 21-11-1955

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 10(2)
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 10(2)
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Criminal Procedure Code, 1898 (CrPC) — Section 10(2)

Citation : (1956) 26 AWR 811

Hon'ble Judges : Gopalji Mehrotra, J

Bench : Single Bench

Advocate : S.N. Kacker, for the Appellant; Mohd. Usmani, for Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Gopalji Mehrotra, J.—This is an application Under Article 226 of the Constitution praying that an order dated 13-6-1955 and one dated 13-7-1955 passed by the Assistant Rent Control and Eviction Officer and the District Magistrate respectively be quashed.

2. The applicant is the landlord of House No. 187, old Bairana, Allahabad and the opposite party No. 3, Durga Prasad, is a tenant in the lower portion of the house. There is a water tap in the portion occupied by the opposite party No. 3 which is used by him. Since the opposite party No. 3 occupied the premises, there has been, as alleged by the applicant waste of water and the excess water charges raised from -/8/- to Re. 1 per month and ultimately to Rs. 8 per month. As the excess water charges were not paid, the Municipal Board cut the water connection and thereafter the opposite party No. 3 made an application u/s 7-D of the UP Control of Rent and Eviction Act to the District Magistrate who

forwarded the application for disposal to the opposite-party No. 2, the Assistant Rent Control and Eviction Officer, Allahabad. On 13-6-1955, the opposite-party No. 2 passed an order directing the applicant to restore the water connection and further directed that in case of his failure to do so, the tenant had the light to get the connection restored and deduct the charges thereof from the rent. The applicant thereafter made an application to the District Magistrate for a fresh hearing of the matter and by his order dated 18-7-1955, he declined to interfere with the order passed by the Rent Control and Eviction Officer dated 13-6-1955. A suit has also been filed by the applicant against the tenant for a declaration that the rent agreed upon between the applicant and the opposite-party included the payment of water-tax but any excess water tax had to be paid by the tenant.

3. Notices were issued to the opposite-parties and in the counter-affidavit it is denied that the rent agreed upon between the parties only included water-tax and the excess charges had to be paid by the tenant. Two points were urged by the applicant in this petition; Firstly, it was contended that as the water connection had been cut by the municipal board for non-payment of the excess charges, the applicant-landlord has not deprived the tenant of any amenity and consequently no orders could be passed u/s 7-D of the Control of Rent and Eviction Act. There is no force in this contention of the applicant. The excess water tax could have been paid by the landlord and thus the ordinary convenience enjoyed by the tenant would not have been affected by the cutting of the water connection. He has been deprived of even the normal consumption of water. There is, therefore, no force in this contention of the applicant.

4. It was then contended that in any case, the Assistant Rent Control and Eviction Officer should have determined the question whether the agreed rent included the excess water-tax. I do not think it was necessary for the Rent Control and Eviction Officer to go into that matter u/s 7-D of Control of Rent and Eviction Act. That is a matter which will be decided by the Civil Court. The water consumed by the applicant was an amenity and the applicant had been responsible for depriving him of that amenity. The Rent Control and Eviction Officer could only decide u/s 7-D questions relating to matters claimed as amenity within the meaning of the section and whether he had been deprived of the same. The argument of the Petitioner is that in order to decide if the cutting of water connection was reasonable, this Rent Control and Eviction Officer could go into the question of the extent of the contract. Even if there was a contract, the Petitioner could enforce it through civil court but he could not so act as to deprive the Petitioner of the benefit of normal water supply.

5. The last point urged by the applicant was that the Assistant Rent Control and Eviction Officer had no power to pass an order u/s 7-D. S 7-D of the Control of Rent and Eviction Act authorises a District Magistrate to pass an order in case an amenity enjoyed by a tenant has been interfered with by the landlord. The District Magistrate has been deemed in the Act u/s 2(d) as follows:

"District Magistrate" includes an officer authorised by the district magistrate to

perform any of his functions under this Act.

The question, therefore, to be decided is whether the Assistant Rent Control and Eviction Officer, when he decided this matter, was an officer authorised by the District Magistrate within the meaning of Section 2(d) of the Act so that he could be regarded as the District Magistrate u/s 7-D. There was no general order passed by the District Magistrate authorising the Rent Control and Eviction Officer to deal with applications u/s 7-D. Subsequently an order had been passed by the District Magistrate authorising the Rent Control and Eviction Officer to deal with matters u/s 7-D but at the time when the order in the present case was passed by the Assistant Rent Control and Eviction Officer, there was no such general order authorising the Rent Control and Eviction Officer. The contention of the opposite parties, however, is that when the application was made to the District Magistrate, he ordered that the application should be disposed of by the Assistant Rent Control and Eviction Officer and that was an authorisation within the meaning of Section 2(d). It is contended by the opposite-parties that there is no express provision in the Act under which a particular form of authorisation is provided for and it is open to the District Magistrate to authorise any officer to deal with the matter in any manner he liked. The District Magistrate, when he passed the order directing the Assistant Rent Control and Eviction Officer to deal with this matter, he applied his mind to the question and authorised him to discharge the functions of the District Magistrate u/s 7-D. Reliance was placed on the observations made by Brij Mohan Lall, J. in F.A. 251 of 1954. That was a case where an application for permission to sue was sent to the Additional District Magistrate for disposal. As one of the parties approached him, he returned the file to the District Magistrate with the remark that the matter may either be disposed of by the District Magistrate himself or be sent to another Additional District Magistrate. The District Magistrate sent that application for disposal to the Additional District Magistrate (Rural). That order was challenged on the ground that there was no valid authorisation. Brij Mohan Lall, J. held that no particular form of authorisation was necessary under the Act and consequently the order of the District Magistrate sending the application for disposal to the Additional District Magistrate (Rural) amounted to an authorisation. Dayal, J. held a contrary-view on that point. He, however, held that u/s 10(2) of the Code of Criminal Procedure, the Additional District Magistrate could deal with the matter as he was a District Magistrate for the purposes of Section 3 also. In my opinion, Section 2(d) expressly provides that the District Magistrate includes an officer authorised by the District Magistrate to perform any of his functions under the Act. One of the functions of the District Magistrate under the Act is to deal, with applications u/s 7-D and unless there is an authorisation to discharge a particular function u/s 7-D, the mere sending of a particular application made u/s 7-D to him for disposal to any other officer does not necessarily amount to an authorisation to perform any of the functions. The authorisation contemplated u/s 2(d) necessarily implies an authority to discharge the functions of the District Magistrate under the Act. It does not mean the disposal of a particular

application. The Assistant Rent Control and Eviction Officer, on the date when he passed the order, had no proper authority to do so.

6. The next contention of the opposite-parties was that by his order dated 18-7-1955, confirming the order passed by the Assistant Rent Control and Eviction Officer, in any case, the District Magistrate himself passed an order u/s 7-D. The order of the District Magistrate dated 18-7-1955, can be treated as a valid order made by him u/s 7-D. There is no force in this contention. The District Magistrate, by his order dated 18-7-1955, has rejected the application on the ground that a specific authority was given to the Assistant Rent Control and Eviction Officer by him by his order dated 16-5-1955 and he had further remarked that after having given full delegation of power to the Assistant Rent Control and Eviction Officer, he had no jurisdiction to hear the petition. This order, therefore, cannot be regarded as an order u/s 7-D. That order on the face of it appears to be erroneous. Even if he had authorised the Rent Control and Eviction Officer to perform certain functions, the District Magistrate's power did not cease and, as I have already held, the order of 16-5-1955 did not amount to an authorisation within the meaning of Section 2(d) but only amounted to an order directing the Assistant Rent Control and Eviction Officer to decide a particular application.

7. I, therefore, allow this petition in so far as I quash the order of the Assistant Rent Control and Eviction Officer dated 13-6-55 and that of the District Magistrate dated 18-7-1955. It is open to the District Magistrate to order any other officer properly authorised to deal with the application.

8. In the circumstances of the case, I make no order as to costs.