
(1999) 11 AHC CK 0159

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 1061 of 1999

Smt. Geeta Devi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-11-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 133(1), 145, 482
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(1)

Citation : (1999) 3 ACR 2518

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : Sandeep Saxena and Vishnu Gupta, for the Appellant; R.K. Jain, A.G.A. and A.N. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—This is a petition u/s 482, Code of Criminal Procedure with a request to quash the proceedings of Case No. 13 of 1997 State v. Shakuntala Devi, pending in the Court of City Magistrate, Kanpur Nagar u/s 133, Code of Criminal Procedure.

2. The Petitioners have alleged that they are tenants of different shops of premises No. 32/80, Mani Ram Bagiya, Kanpur Nagar of which opposite party No. 2 was the landlord and owner. That opposite party No. 2 has transferred the property in favour of opposite party Nos. 3 to 7 on 24.9.98. That opposite parties are looking out some way to evict the Petitioners. That instead of invoking -the provisions of U.P. Act No. XIII of 1972, on the other hand, opposite party No. 2 filed an application u/s 133. Code of Criminal Procedure before the City Magistrate, Kanpur Nagar, on which he has passed a conditional order for removal of the structure u/s 133. Code of Criminal Procedure

3. The conditional order has been challenged by the learned Counsel on two grounds. Firstly, that it is not a legal order and secondly, that the opposite

parties should have taken recourse of the provisions of Section 21 of U.P. Act No. XIII of

1972 and cannot be permitted to get rid of the tenants in this manner.

4. I have heard Sri Vishnu Gupta, learned Counsel for the Petitioners and Sri R.K. Jain, senior counsel for opposite party Nos. 2 to 7 and the A.G.A. and have gone through the record.

5. The impugned order u/s 133(1), Code of Criminal Procedure starting proceedings is Annexure-C.A. 3. It is mentioned in the order that the Officer Incharge of the Police Station has submitted report on 30.7.1997 that premises No. 32/80 in dispute is very old and is in dilapidated condition. Its upper portion has already fallen. The shops outside the building may fall at any time, which may result it taking the life and destroy the property of general public. He has, therefore, directed the Petitioners to show cause on 29.1.98 as to why the order may not be passed for demolition.

6. The Petitioners have not filed any objection to this show-cause notice and have approached this Court to quash the proceedings u/s 133, Code of Criminal Procedure It is contended that the order has been passed on the basis of the police report and the learned Magistrate has not recorded the satisfaction. This argument of the learned Counsel cannot be accepted in view of the provisions of Section 133(1), Code of Criminal Procedure The order can be passed by the Magistrate on receiving the report of the police officer or other information and on taking such evidence, if any, as he considers necessary. Before passing the order, satisfaction is required to be recorded u/s 145, Code of Criminal Procedure, but contrary to it, the language used in Section 133, Code of Criminal Procedure is different and, therefore, the argument that the learned Magistrate should have recorded satisfaction, is not correct. The order u/s 133, Code of Criminal Procedure can be passed on the basis of police report alone.

7. The learned Magistrate has mentioned that the premises is in such a condition that it is likely to fall at any time and may cause injury to the persons and also to the property. This order is in accordance with Clause (d) of Section 133(1), Code of Criminal Procedure which reads as follows:

133. Conditional order for removal of nuisance.--(1) Whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a Police Officer or other information and on taking such evidence (if any) as he thinks fit, considers--

(a)

(b)

(c)

(d) that any building, tent or structure, or any tree is in such a condition that it is

likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

8. The learned Counsel for the Petitioners in support of the argument has also referred to Ghulam Rasool Riaz Ahmad v. State 1979 ACC 1. It was observed in this case that "two monsoons have gone by and no untoward incident had taken place. This fact coupled with the finding of the Magistrate indicates that there is no immediate danger of collapse of the building and thereby rendering it unsafe to the public or the passerby." Regarding second argument of the learned Counsel for the Petitioners also relied on the observation in this case that "the landlord has already taken recourse of U.P. Act No. XIII of 1972 where he can be awarded the relief and therefore, the order u/s 133, Code of Criminal Procedure is not justified." The observations made in the above judgment are of no help to the Petitioners. The reason is that in this case final order for demolition was passed by the Magistrate u/s 133, Code of Criminal Procedure The learned Magistrate has only issued the notice in the present case and has yet to decide whether there is immediate danger of collapse of the building or not. The revision has been filed prior to recording the finding of the Magistrate on this point and, therefore, this point is not open to the Petitioners. This can be decided on the basis of the evidence adduced by the parties and unless the finding is recorded by the Magistrate, this Court u/s 482, Code of Criminal Procedure cannot record any finding in this regard.

9. The learned Counsel for the opposite parties have referred to the decision of this Court in Smt. Qamar Jahan and others v. State of U.P. and Anr. 1997 (2) ARC 35. This case provides the complete reply to the arguments of the learned Counsel. It was observed in para 10 of the judgment that the learned Magistrate has done nothing but to issue a notice to the applicants to show cause as to why the offending constructions be not removed and the order has not been made absolute. That therefore, the proper remedy for the Petitioners is to appear before the learned Magistrate and to file objection.

10. In the present case, the position is the same and only notice has been issued, the Petitioners should have appeared before the Magistrate and filed objections and produced evidence relevant for the purposes of question in issue, and naturally the Magistrate concerned will consider the evidence and record finding whether the building liable to be demolished under Clause (d) of Section 133(1), Code of Criminal Procedure At this stage, there is no reason to drop the proceedings.

11. The other argument is that the landlords are trying to evict the Petitioners and have adopted this method. The alternative remedy to file an application u/s 21(1)(b) of U.P. Act No. XIII of 1972 does not bar the action taken by the Magistrate u/s 133, Code of Criminal Procedure The matter u/s 133, Code of Criminal Procedure can be decided with great speed and in case of emergency

action can be taken u/s 133, Code of Criminal Procedure In the above case of Smt Qamar Jahan (supra), it was also observed that the existence of alternative remedy u/s 21(1)(b) of U.P. Act No. XIII of 1972 does not bar the proceedings u/s 133, Code of Criminal Procedure The Hon'ble Supreme Court has repeatedly observed that the inherent powers u/s 482, Code of Criminal Procedure should not be used according to whim or caprice. The power should be exercised sparingly and with circumspection in rarest of rare case.

12. In the present case nothing has been decided by the learned Magistrate. The petition for quashing the show cause notice is misconceived.

13. The petition is, therefore, dismissed.