

(1955) 02 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 351 of 1954

Sri Ram Chandra Saksena

APPELLANT

Vs

Sri Kailash Kishore Verma and Others

RESPONDENT

Date of Decision : 03-02-1955

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7D

Citation : (1955) 25 AWR 263

Hon'ble Judges : Brij Mohan Lall, J

Bench : Single Bench

Advocate : B.S. Darbari, for the Appellant; B.D. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Brij Mohan Lall, J.—The Petitioner owns Bungalow No. 7/182, in Sarupnagar at Kanpur. A portion of it is in the occupation of Kailash Kishore Verma, opposite party No. 1 as tenant since 1946. The latter made a petition to the Rent Control and Eviction Officer u/s 7-D of the U.P. (Temporary) Control of Rent and Eviction Act (III of 1947) charging the Petitioner with having cut off water connection and praying that he might be ordered to restore the said connection.

2. The Petitioner denied that there had ever been any pipe at the place alleged by the opposite-party and naturally denied having removed that pipe.

3. The parties filed affidavits before the Rent Control and Eviction Officer. The House Inspector inspected the locality and made a report. Thereafter the Rent Control and Eviction Officer himself made an inspection. He passed an order on the 13th of January, 1954 the substance of which is summarised in the last paragraph, which runs as follows:

Thus from the reasons referred above I do not consider that there is any case where amenities of water has been withheld by the landlord and the application of the applicant is therefore rejected.

4. Five days later, i.e., on 18th Jan., 1951 the opposite-party moved a petition before the District Magistrate praying that;

It is therefore prayed that your honour may kindly be pleased to call for the record of this "case and after going through the same and getting spot enquiries made such orders may kindly be passed as this honourable court deems fit and proper under the circumstances of this case.

5. The District Magistrate directed the Additional District Magistrate to make an inspection. The latter sent his report to the District Magistrate and thereupon the District Magistrate passed the following order on 11th March, 1954.

It is ordered that the amenity did exist and the landlord has deprived the tenant from this amenity. R.C. & E.O. is directed to take action to have this amenity restored as early as possible, and to prosecute the landlord if he persists in denying this amenity.

6. The present petition was presented on 12th April 1954 praying that this Court acting under Article 226 of the Constitution

be pleased to issue a suitable writ or direction or order quashing the order of the learned District Magistrate Kanpur, opposite-party No. 2 dated 11th March 1953 and restoring the order of the Rent Control and Eviction Officer, Kanpur, dated 13th January 1954 and proceedings may be stayed meanwhile.

7. An interim order was issued the same day to the effect that the District Magistrate's order dated 11th March 1954 would not be enforced till further order of this Court.

8. Besides the tenant the District Magistrate has been impleaded as opposite-party. The Rent Control and Eviction Officer has not been impleaded obviously because his order dated 13th January, 1954 was favourable to the Petitioner.

9. Opposite-party No. 1 has mentioned some more facts which also may be mentioned here. He has pointed out that acting on the District Magistrate's order dated 11th March 1954 the Rent Control and Eviction Officer passed on 22nd March 1954 an order which runs as follows:

On the application of Sri Kailash Kishore Verma tenant of your house No. 7/182, Swarup Nagar, Kanpur regarding restoration of pipe in the latrine submitted to the District Magistrate inquiry was made and it was established that the amenity of pipe was fixed in the latrine and it was removed by you without any reasonable cause. I therefore hereby order u/s 7-D of the Act that the amenity of the pipe be restored in the latrine of Sri Kailash Kishore Verma by 27th March 1954 failing which action will be taken against you u/s 8 of the Act.

10. Learned Counsel for the Petitioner states that his client was obviously ignorant of this order till the date of filing the petition otherwise there was no point in not impleading the Rent Control and Eviction Officer and not challenging this order.

11. The main question that has been argued is whether the District Magistrate had power to interfere with the order passed by the Rent Control and Eviction Officer. The decision of the question will turn upon the further question whether the Rent Control and Eviction Officer's order passed u/s 7-D was a quasi-judicial order or an administrative or executive order. The distinction between such orders was pointed out by Agarwala, J. in the case of Avadhesh Pratap Singh v. The State of Uttar Pradesh, The Deputy Commissioner of Faizabad and the Assistant Manager, Court of Wards Faizabad 1952 A.L.J.R. 342. Relying on the remarks of their Lordships of the Supreme Court in the case of Province of Bombay Vs. Kusaldas S. Advani and Others, , Agarwala, J. held that

a quasi-judicial act requires that a decision is to be given not arbitrarily or in the mere discretion of an authority, but according to the facts and circumstances of the case, as determined upon an enquiry held by the authority after giving an opportunity to the party to be affected of being heard and when-ever necessary leading evidence in support of his contentions. Whenever the authority is bound to make a decision in this way, it acts judicially or quasi-judicially. The essential difference between an administrative or executive act on the one hand and a judicial and quasi-judicial act on the other is that while in the former case, the authority vested with the power to give a decision affecting the rights of others, may be bound to enter upon an enquiry, he is not bound to give a decision as a result of the enquiry, but may act in his discretion, in utter disregard of the result of the enquiry, in the latter case, such authority, is bound by law to act on the facts and circumstance, as determined upon the enquiry, in which a person to be affected is given full opportunity to place his case before the authority even though the decision of such authority, whether right or wrong, may be final and may not be liable to be challenged in a court of law.

12. This dictum was followed by another Bench of this Court in the case Shri Mannu Lal v. Chakradhar Hans 1952 A.W.R. (H.C.) 279. This latter case was cited with approval in the Full Bench case Abdul Hamid Vs. Smt. Fatima Begum, . Applying the principle laid down in the above cases one comes irresistibly to the conclusion that an order passed by the Rent Control and Eviction Officer u/s 7-D is a quasi-judicial order. Sub-section (3) of Section 7-D makes it obligatory on the District Magistrate to hold an enquiry and further to base his decision on the result of the enquiry. The District Magistrate cannot dispense with the enquiry nor can he ignore the result of that enquiry. Since an enquiry is enjoined by law naturally the parties have a right to adduce evidence. The findings are, therefore, to be based on the evidence. The evidence in the present case, as already stated, consists of affidavits and the inspection notes.

13. Learned Counsel for the Petitioner contended that an enquiry did not become a quasi-judicial enquiry unless it was enjoined by law in express terms that the parties would have a right to lead evidence. He maintained that since no such right to adduce evidence was conferred in express language on the parties in an enquiry prescribed by Sub-section (3) of Section 7-D the final order of the

District Magistrate would not become a quasi-judicial order. I find no force in this argument. Since the statute makes it obligatory on the District Magistrate to hold the enquiry it implies that the parties have a right to produce evidence before him and the District Magistrate is bound to base his conclusion on the evidence so produced by the parties. Further I find no force in the contention that unless the right to lead evidence is conferred in express language the proceedings would not amount to quasi-judicial proceedings. Even where that right is given by implication the proceedings shall constitute quasi-judicial proceedings. I am, therefore, of the opinion that the order which the District Magistrate passes u/s 7-D is a quasi-judicial order. The District Magistrate had, in the present case, delegated his functions to the Rent Control and Eviction Officer and therefore the latter's order dated 13th January, 1954 was a quasi-judicial order.

14. An administrative order of a subordinate authority may be interfered with by his superior officer in certain given circumstances. But there is no warrant for the proposition that a quasi-judicial order can also be modified or revised by any authority which has not been given such power by some express provision of law. The District Magistrate had no power whatsoever to intermeddle with the order passed by the Rent Control and Eviction Officer u/s 7-D. His order dated March 11, 1954 was therefore an order unwarranted by law and without jurisdiction.

15. It is next contended by Learned Counsel for the opposite-party that the order dated 11th March 1954 was simply a direction issued to his subordinate and was not an order. He maintains that this Court is powerless to interfere with this order because it is a direction and not an order. In support of his contention he has cited the cases of *Shri Chandra Bhan v. The Rent Control and Eviction Officer* 1953 A.W.R. (H.C.) 434 and *Ram Lakhan Lal Vs. Addl. Commr., Gorakhpur and Another*, . None of these cases supports the conclusion which the Learned Counsel wants to draw from them. They are authorities for the proposition that if the Rent Control and Eviction Officer passes an order directing his subordinates to allot a house to a certain person and does not pass a formal order in accordance with Section 7(2) of the Act directing the landlord to let the house to the allottee no valid allotment comes into effect and no right is conferred on the allottee in respect of the said accommodation. The allottee has, in such a case, no locus standi to claim any right as such. None of these cases lays down that this Court has no power to interfere with such an order in case it prejudicially effects the rights of any person. I am, therefore, unable to accept the contention that although this Court may hold that the District Magistrate's order dated 11th March 1954 is an order without jurisdiction it has no power to undo the wrong that follows from that order.

16. The next question that arises is as to what should be the form of that order. It is suggested that no writ of certiorari will lie against that order because it is not a quasi-judicial order. I am of opinion that the matter does not present any difficulty. Since the District Magistrate has intermeddled with a judicial

proceeding his order can be quashed by means of a writ of certiorari. In the alternative a writ of prohibition can issue against him directing him not to enforce his order because it is an order without jurisdiction.

17. It was next: argued that the order has been complied with and therefore no such direction can be issued to the District Magistrate. This contention also is without force. The District Magistrate's order directs the Rent Control and Eviction Officer to take action "to have this amenity restored as early as possible." That amenity has not yet been restored and it is incorrect to say that the order of the District Magistrate has been carried out.

18. In the circumstances this petition succeeds. The District Magistrate's order dated 11th March 1954 is quashed and he is directed not to enforce, either by himself or through his subordinates, the said order. The Petitioner shall get his costs from opposite-party No. 1.