
(1956) 08 AHC CK 0010
In the Allahabad High Court
Case No : Civ. Misc. Writ No. 994 of 1955

Sri S.C. Abel and Others

APPELLANT

Vs

The District Magistrate of Allahabad

RESPONDENT

Date of Decision : 01-08-1956

Acts Referred:

Cantonments (House Accommodation) Act, 1923 — Section 12, 30, 31, 32(2), 33
Constitution of India, 1950 — Article 226

Citation : (1956) 26 AWR 638

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : Ambika Prasad, for the Appellant;

Final Decision : Allowed

Judgement

Mehrotra, J.—This is a petition on behalf of seven persons under Article 226 of the Constitution praying that a writ of mandamus be issued directing the opposite parties Nos. 1 and 2, the District Magistrate of Allahabad and the Commanding Officer of the Cantonment, Allahabad, not to interfere in any manner with the possession of the applicants of the houses occupied by them. A prayer was further made that any other order, writ or directnn be issued, as this Court thinks ht, under Article 226 of the Constitution.

2. The seven applicants are residents of the Allahabad Cantonments. In the first week of April, 1955 the applicants received notices u/s 7(1)(b) of the Cantonments (House Accommodation) Act, 1923), under the signature of the Commanding Officer requiring the applicants to vacate their houses on or before 6-5-1955. The Petitioners after making a representation to the Commanding Officer went up in appeal to the Officer Commanding the District against this notice u/s 30 of the Act. After filing the appeal the applicants sent another application u/s 33 of the Act asking the Officer Commanding to hold up action till the decision of their appeal. On 12-10-1955 the received another notice under the signature of the District Magistrate, Allahabad, asking them to vacate the

house by 25-10-1255 failing which the applicants will be ejected by means of force.

3. The present petition has been filed challenging the order passed by the District Magistrate, Allahabad, opposite party No. 1, on 17-10-1955. This order purports to be one u/s 12 of the Cantonments (House Accommodation) Act, 1923. Notices were issued to the other side. A counter-affidavit has been filed in which it is stated that the Commanding Officer being satisfied that the houses were suitable for the Officers of the Garrison issued notices u/s 7 for the vacation of these premises to the applicants. They went up in appeal. It was said that it was given out to the Petitioners orally by the Commanding Officer that their representations were rejected. Thereafter the District Magistrate, Allahabad, issued orders u/s 12 of the Act. In the counter affidavit it is specifically stated that the deponent Sri A.S. Reddy had no knowledge as to what happened to the petitions appeals.

4. In the present petition three grounds have been urged.

5. Firstly, it is contended that u/s 30 of the Act when the appeal was filed notices had to be issued to the Appellants and the Appellants had to be heard in person. No notice was served on the applicants in this case and the procedure prescribed u/s 30 for the hearing of an appeal was not complied with. As the appeals were not properly heard and disposed of the order passed by the District Magistrate u/s 12 of the Act is illegal and should be quashed.

6. It has also been urged by the applicants that the notices issued u/s 7(1)(b) in April, 1955 were also not in accordance with law as the numbers which were given in the notices are not the real numbers of the houses in which the applicants are actually residing. The notice is therefore defective and should be quashed.

7. u/s 30 of the Cantonments (House Accommodation) Act, 1923,

The owner or my tenant of a house in respect of which a notice has been issued u/s 7 may, within a period of ten days from the date of the service thereof, appeal to the Officer Commanding the District against the decision of the Officer Commanding the station to appropriate the house.

8. Section 31 lays down the contents of the petition and Section 32(2) of the Act provides that the notice of the result of the appeal shall be given to the Appellant as soon as may be, and where the Appellant is a tenant of the house, to the owner of the house also.

9. It appears from the affidavits filed by the parties that the procedure laid down for hearing of an appeal was not complied with in this case as no notice was given to the applicants. Section 12 of the Act provides that

If the owner fails to give possession of a house to the Officer Commanding the station in pursuance of a notice issued u/s 7, or if the existing occupier fails to vacate a house in pursuance of such a notice, the District Magistrate, by himself

or by another person generally or specially authorised by him in this behalf, shall enter on the premises and enforce the surrender of the house.

10. This section necessarily presupposes that the appeal against the notice u/s 7(1)(b) has been finally disposed of by a competent authority. In the notice issued by the District Magistrate it is mentioned that to his knowledge the appeal has been disposed of. In my opinion there has been no proper disposal of the appeal and the notice u/s 12 of the Act issued by the District Magistrate on 10-10-(sic) should not be given effect to for ejecting the applicants from their respective premises. I have looked into the notice issued by the Commanding Officer on 4-4-1955 and find that the notice is defective. I therefore direct that the notice issued by the opposite party No. 2 in April, 1955 be quashed.

11. I therefore allow the petition with costs.