

(1956) 02 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 129-D of 1953

Sujraj Kumari

APPELLANT

Vs

Dr. D.C. Chtani and Others

RESPONDENT

Date of Decision : 02-02-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, 11
Constitution of India, 1950 — Article 13, 226, 227
Delhi and Ajmer-Merwara Rent Control Act, 1947 — Section 7A

Citation : AIR 1956 P&H 157

Hon'ble Judges : Falshaw, J

Bench : Single Bench

Advocate : A.N. Grover and K.K. Raizada, for the Appellant; Gurbachan Singh, for the Respondent

Final Decision : Allowed

Judgement

Falshaw, J.—The facts giving rise to this petition under Articles 226 and 227 of the Constitution filed by Sm. Suraj Kumari are as follows. The petitioner had constructed two houses, Nos. 42 and 43, in the Western Extension Area, Karol Bagh, which were let in portions to tenants for residential purposes, there being six tenants in house No. 42 and four in house No. 43. Out of these ten tenants two who were occupying portions of house No. 43 and one who was occupying a portion of house No. 42 applied-under the provisions of the Delhi and Ajmer-Merwara Rent Control Act of 1947 for the fixation of the standard rent of the premises occupied by them.

Section 7A of the Act provided for fixation of standard rent for buildings classed as newly constructed premises and the Fourth Schedule to the Act prescribed the methods to be adopted by the Rent Controller for this purpose. Acting under these provisions the Rent Controller passed an order on 8-5-1950 in which he fixed the standard rents not only of the portions of the premises occupied by the three tenants who had applied, but also for the remaining seven tenants in the

different parts of the two houses.

2. Under the Act an appeal lay against this order to the District Judge and on 8-6-1950 the owner filed an appeal in that Court in which she challenged the standard rents fixed by the Bent Controller as a whole, though she only impleaded as respondents in the appeal the three tenants who had applied for fixation of the standard rents.

3. When the appeal came up for hearing the objection was raised by the respondents who had been impleaded that the appeal was bad because the other seven tenants ought also to have been impleaded as their standard rents had also been fixed in the same order and were being attacked in the appeal.

4. The then learned District Judge passed following order on 17-5-1952 :

"This is an appeal against a judgment "in rein". If the appellant has not impleaded any particular party, the appeal does not abate. Learned counsel for the appellant, however, states that with a view to afford the other tenants an opportunity of full hearing, he has absolutely no objection to implead them as respondents in the present appeal. Learned counsel will thus make an application to this effect and notices will then issue to the tenants who have not figured so far as respondents."

This order was followed a day or two later by an application u/s 151 and Order 1, Rule 10, Civil P. C., for the Issue of notice to the other seven tenants.

5. At the next hearing of the appeal objection was raised before the officer who had taken place of the learned District Judge who had passed the above order that the appeal should be dismissed as the seven remaining tenants who were necessary parties had only been impleaded after the period of limitation had expired. After considering the arguments given by the parties the learned District Judge upheld this contention and dismissed the appeal.

6. A writ petition challenging this order was filed on the 5th August and it came up for, admission before my Lord the Chief Justice and myself on 2-11-1953 when we passed the following order :

"Dismissed as withdrawn. Let certified copies attached to the petition be returned to the petitioner."

The present petition was filed on the 13th of November and admitted by us on 10-12-1953. The only differences between the two petitions are that in the first one the only respondents impleaded were the ten original tenants, along with two who had subsequently taken the place of two of the original tenants, whereas in the present petition the District Judge and the Rent Controller whose orders are challenged have also been added as respondents, which is obviously at least a formal necessity, and that some three additional grounds have been added in para 9 to the grounds on which the legality of the orders was challenged.

7. The maintainability of the present petition has been challenged by the learned counsel for the tenants, who are the only persons interested in contesting the petition, on the ground that once a writ petition has been dismissed no second petition lies on the same grounds. Against this, however, the case of the petitioner is that the first petition was dismissed by us on the understanding that certain formal defects required correction and that a fresh petition on similar lines was to be filed, and it was for this reason that we ordered the return of the certified copies which had been attached to it.

I cannot at this stage recollect exactly what was said at the time when the first petition was dismissed, but I have no doubt that although we did not specifically say so in our order, we understood that the petition was being withdrawn simply for the purpose of filing a fresh petition on the same lines and that we had no objection to this course.

8. In support of his contention that under no circumstances could a second petition of the same nature be entertained after an earlier one had been dismissed, the learned counsel for the respondents relied on the decision in -- "Queen v. Bodmin Corporation" (1892) 2 QB 21 (A), in which, it was held that where a rule for a mandamus to compel a corporation to perform a statutory duty has been discharged, on the ground that no demand and refusal have taken place, the Court will not grant another rule for a mandamus for the same purpose, although a demand and refusal have taken place since the discharge of the former rule. In this decision an earlier case of 1845, -- "Ex parte Thompson" (1845) 6 QB 721 (B), was followed.

9. I must confess that with the utmost respect for the learned Judges who decided the matter in that way, I cannot agree with their view of the matter and I cannot see why when a petition for a writ of mandamus is dismissed on the ground that it is premature, another petition cannot be filed when the circumstances which necessitated it have come into existence.

It is indeed clear that the practice followed in those two cases was not universally followed by the English Courts. In the judgment of Day J., at page 23 there is a reference to the case of -- "Reg v. Deptford Pior Co. (1838) 8 A&E 910 (C), in which a second application for a mandamus was granted and the following passage occurs in the Judgment of Charles J. :

"It is said, no doubt, in Tapping on Mandamus, that the Court will entertain a second application after the refusal of the first; but on reference to the authority cited in support of the proposition "(Ex parte Inhabitants of Carlton High Dale", 4 N & M 312) (D), it turns out that that was not a case of the former application having been refused, but that there, it being found on the application for the rule in the first instance that the materials were insufficient, the application was withdrawn and renewed on a future occasion."

The reports of the cases referred to are not available, but it is at least clear that some Judges entertained second applications in certain circumstances.

10. Apart from the mere question of principles, it is clear that in the present case the petition was dismissed as withdrawn with our approval, and with at least our implied consent that a fresh petition on more or less the same grounds would be entertained, and I can recall many instances in which I and other Judges of this Court have dismissed petitions on the ground that they were premature, and without recording it in our orders of dismissal, have told the petitioners to come to the Court with their petitions when the anticipated circumstances had arisen.

11. It was argued by the learned counsel for the respondents that in dismissing the petition as withdrawn with permission to file a fresh petition, we were limited by the principles contained in Order 23, Rule 1, Civil P. C. I do not, however, consider that the principles contained in that rule relating to suits can be strictly applied to applications for the exercise of the Court's extraordinary jurisdiction under Articles, 226 and 227 of the Constitution.

Actually in the present case it would have been quite simple and unobjectionable for the petitioner to file a supplementary petition for impleading the formal respondents, the Bent Controller and the District Judge, and for adding supplementary grounds, as has been done in the second petition, and in my opinion the petition should not be dismissed on these grounds.

12. It is easy to understand why the learned counsel for the respondents was so anxious to have the petition dismissed on this preliminary point, since there is a decision of a Division Bench of this Court, Khosla and Kapur JJ., in the case -- "British Medical Stores v. Bhagirath Mal AIR 1965 Punj (E), which is binding on me, and which appears to settle the matter conclusively regardless of the judgment of the learned District Judge on the preliminary point which is under appeal before me.

In that case it has been held that the provisions of Section 7A and Sch. IV of the Delhi and Ajmer-Merwara Bent Control Act of 1947 are unconstitutional and have become void as a result of the coming into force of the Constitution. The effect of this is that the proceedings before the Bent Controller were without jurisdiction and the parties stand in the position where they started.

13. I may say that although this decision is binding on me, I do not altogether agree with it as it was based on the view that the classification of the premises into newly constructed and old premises is based on no rational grounds, whereas in my opinion it was not only rational but necessary to make some provision for fixation of standard rent of newly constructed buildings on different lines from the way in which the standard rent is fixed for old buildings which had been leased to tenants long before the Act came into force. I also understand that this Judgment is the subject of an appeal now pending in the Supreme Court.

14. It was contended on behalf of the respondents that I should disregard this Judgment on the ground that at no stage, and not even in the grounds contained in the present petition, has the objection been raised that S. 7A and the Fourth Schedule of the Act were "ultra vires" and that the proceedings before the Bent

Controller and the District Judge were therefore without jurisdiction, but actually the present petition was filed in November 1953 and the judgment of Khosla and Kapur JJ., was delivered on 26-8-1954.

I do not, however, feel that it is possible for me to ignore a decision of this Court which renders all proceedings taken by the Bent Controller u/s 7A and Schedule 4 null and void.

Beliance was placed on the observations of Subba Bao J. in -- R.V.K.M. Surya Rao Bahadur Varu, Rajah of Pithapuram Vs. The Board of Revenue (Settlement of Estates) Madras, , to the effect that the petitioner who had submitted to the jurisdiction of the Bevenue Board was precluded from questioning the jurisdiction in a writ of "certiorari", in which apparently, though he has not stated so plainly, he was acting on the view of the Full Bench of the same Court in - "Latchmanan Chettiar v. Corporation of Madras" AIR 192 Mad 130 (G), that where the applicant armed with a point either of law or of fact which would just the jurisdiction of the lower Court has elected to argue a case on the merits before that Court, he must be taken to have submitted himself to a jurisdiction which he cannot be allowed afterwards to seek to repudiate by applying for a "certiorari".

It would seem, however, that in this case the question of jurisdiction which was sought to be raised was not the fundamental one of inherent jurisdiction, as in the present case, and I do not consider that this principle can be held to be a bar to granting relief by way of "certiorari" where the statutory provisions under which certain actions have been done have been declared by a Court to be "ultra vires" and unconstitutional. There is another decision of a Judge of the Madras High Court Rajagopalan J., in - "Sastri Ammal v. Pravalavarna Naicker" AIR 1956 Mad 146 (H), in which the principle has not been followed. The learned Judge observed-

"Under such circumstances neither the fact that the petitioners participated up to a stage in the enquiry before the Deputy Commissioner nor the fact that they appealed to the Commissioner to set aside the order of the Deputy Commissioner is enough to disentitle the petitioners to the grant of relief under Article 226 based on the finding that the Deputy Commissioner acted wholly without jurisdiction.

15. In the circumstances I accept the petition and hold that the proceedings before the Rent Controller were without jurisdiction and that what happened in the appeal before the learned District Judge is immaterial, but since the decision is based on a judgment of this Court which was delivered subsequent to the filing of the petition and on a ground not raised therein, I leave the parties to bear their own costs.