

(2000) 02 AHC CK 0059
In the Allahabad High Court
Case No : C.M.W.P. No. 21794 of 1995

Surendra Singh Bagga and another	Vs	APPELLANT
Collector/District Magistrate, Varanasi and others		RESPONDENT

Date of Decision : 21-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21, 226

Citation : (2000) 2 AWC 1225

Hon'ble Judges : Lakshmi Bihari, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : C.K. Parekh, for the Appellant;

Judgement

Binod Kumar Roy and Lakshmi Bihari, JJ.—Whether a District Magistrate of any District of this State has been vested with Jurisdiction on a Landlord's petition to direct the Police force to evict a tenant from the tenanted premises, who can be evicted under the tenancy laws--State or Central alone, is the core question which requires our adjudication in this proceedings under Article 226 of the Constitution of India.

2. The petitioners, who claim to be lawful tenants and occupants of House No. S-17/390, Mohalla Nadesar. Town and District Varanasi, pray to quash the order dated 21.7.1995 passed by the District Magistrate. Varanasi on the application dated 21.7.1995 of respondent No. 3 Mohd. Iqbal as contained in Annexure-3.

2.1. The impugned order reads thus :

2379

E-R-K

Thanadhyaksh--Cantt.

Kripya Makan Khali Karayen.

Sd. Illegible

Ziladhikari,

Varanasi

21.7.1995."

2.2. The English translation of the order aforementioned reads thus :

"Station House Officer--Cantt.

Please get the house vacated.

Sd. Illegible

Collector of the District

Varanasi

21.7.1995."

3. A perusal of the application as contained in Annexure-3 shows following facts :

Respondent No. 3 Mohd. Iqbal of House No. 517/388 Nadesar. Police Station Cantt., Varanasi, filed it before the Senior Superintendent of Police, Varanasi for vacation of his house from the tenant stating, inter alia, that he has seven sons and three daughters, out of whom four sons and two daughters are adult, who all are sitting idle at house as the financial position is not sound ; about 15 years ago, when his children were very small, and could not do anything, the house was given in tenancy to Yogendra Singh Bagga (whose son is Petitioner No. 1) and Ram Singh Bagga (whose son is Petitioner No. 2) on this term that when his children will grow up and will be in a position to do something the same will be vacated ; when such an occasion has come for vacating the house in terms of the aforementioned condition Yogendra Singh Bagga and Ram Singh Bagga filed a suit as a result of which becoming helpless he, too, has filed a case which is pending in the High Court : Yogendra Singh Bagga and his brother Ram Singh Bagga, who are having enough money and are having relations with undesirable elements of the city, despite repeated request by him did not hear and even torn and threw the agreement and asked him to do whatever he may do so but the house will not be vacated : a Panchayat (Arbitration) was also held but Bagga brothers did not hear to anyone and on the strength of the undesirable elements even became ready to assault ; Bagga brothers have got house and many shops and godowns in front of the road opposite the house in question, yet they want to occupy his house ; and thus it is requested that in this regard the appellants and honoured citizens of the Mohalla be called at Police Station and a Panchayat (Arbitration) be done and steps be taken for vacation of his house so that justice could be done. It further appears that a copy of the aforementioned application was forwarded to many authorities including the Collector of the District Varanasi.

4. In this writ petition, the petitioners assert, inter alia, that the impugned order has been passed without resorting to any legal proceeding and giving any opportunity to them ; it is illegal and without any jurisdiction over the subject-

matter ; Mohd. Yasin, father of respondent Nos. 3 and 4, along with them filed S.C.C. Suit No. 1 of 1976 against the petitioners and Jogendra Singh for arrears of rent, ejectment and damages, etc., which after contest, was decreed only in relation to arrears of rent vide judgment and decree dated 6th September, 1990 of II Addl. District Judge, Varanasi (copy of the judgment has been appended as Annexure-1) and dismissed in relation to the remaining reliefs with proportionate costs against which Civil Revision No. 946 of 1990 was filed in this Court (which from the records appears to be pending till to date and on an application filed by the landlords respondent Nos. 3 and 4 the petitioners have been restrained from demolishing the house) ; in relation to the application dated 21st July, 1995 they filed an objection before the Collector of the District/S.H.O.. Police Station Cantt., Varanasi with copy to the Senior Superintendent of Police. Varanasi and the Chief Minister (copy appended as Annexure-4) denying the allegations and setting forth their defence praying to reject the aforementioned application and for taking steps for lodging a false report under the provisions of the Indian Penal Code for the facts stated therein so that Justice could be done ; despite pointing out a number of facts Including providing the copy of the Judgment aforementioned, rent receipts and other relevant documents, the District Magistrate flatly refused to recall his order and after much persuasion merely directed the City Magistrate to call for a report ; thereafter the Station Officer told that he is helpless because there is already an order of the District Magistrate and therefore the petitioners should Immediately vacate the premises or else It will be got vacated through the Police force. In their objection, the petitioners have stated, inter alia, that Yogendra Singh Bagga had died on 24.12.1994. i.e., to say 7 months ago and thus the allegations made against him stand automatically falsified : that the objectors are not tenants of the house ; that property No. 17/390. Nadesar. which was in dilapidated condition, was given in tenancy in 1974 on this condition to Surendra Singh and Manjit Singh that it will be built from its plinth level of which Rs. 650 will be annual rent, and by investing lot of money they built up the property from plinth ; that thereafter the intention of the landlords became bad and the suit was filed on wrong facts ; and that surprisingly the order was passed on the very day the application was filed.

5. On 14.8.1995 the following interim order was passed by the Division Bench :

"Learned standing counsel has accepted the notices on behalf of the respondent Nos. 1 and 2 and prays for and is granted one month's time to file counter-affidavit. The notices shall go to the respondent Nos. 3 and 4 pending admission.

List for admission after respondent Nos. 3 and 4 are served.

Meanwhile, the petitioners shall not be ejected from the premises in dispute except in accordance with law.

Sd. V. N. Khare. J. Sd.

R. H. Zaidi, J."

6. No counter has been filed by the respondents.

7. Sri C. K. Parekh, learned counsel appearing on behalf of the petitioners, had contended as follows :

"The impugned order is wholly mala fide in law having been passed without any Jurisdiction whatsoever. The decree passed in the suit, instituted by the landlords themselves, was binding on them unless reversed in their favour by this Court In their civil revision. The District Magistrate had no Jurisdiction whatsoever to preempt the decision of the landlords" civil revision which is Still pending adjudication before this Court and has outright erred in directing the subordinate Police authorities to vacate the premises and In refusing to recall his order. Consequently, this writ petition be allowed with exemplary costs saddling the District Magistrate to be paid by him out of his own pocket for the harm which he has done. The action of the District Magistrate is in very teeth of Articles 14 and 19(1)(e) read with 21 of the Constitution of India, the former is antithesis to any arbitrary action and the latter stands as rock in favour of the petitioners, who were against their illegal eviction and till they are evicted in accordance with law. He also informed that the name of the District Magistrate. Varanasi, who had passed the impugned order, is Kuer Fateh Bahadur Singh, I.A.S.

8. Sri H. R. Mishra, learned standing counsel appearing on behalf of respondent Nos. 1 and 2. the Collector-cum-District Magistrate, Varanasi and the Station Officer. Police Station Cantt., Varanasi, at the very outset took up a stand, and in our view very fairly and correctly, that the order impugned is arbitrary, without jurisdiction, mala fide in law and unconstitutional and thus he is not defending it. He, however, comes up with a prayer that the Impugned order perhaps is only first of its kind, and Sri Singh being a new Collector, who has also not been personally impleaded, costs be not Imposed on him.

9. The facts speaks for themselves. The decree not granting eviction was steering on the face of the landlords. Unless that decree is set aside by this Court and/or a further decree for eviction is obtained by the landlords, the petitioners cannot be evicted. The order of the District Magistrate clearly resulted as an interference with the pending proceedings of the civil revision before this Court, filed at the Instance of the landlords and even amounted to interference with administration of Justice of this Court. Besides, he Is not vested with powers to direct eviction of the tenant by the Police at the Instance of the landlords. He has failed to look into the glaring fact that the application was addressed to the S.S.P. Varanasi, who has rightly not taken any action. Accordingly, we hold the impugned order to be wholly null and void, mala fide in law and without jurisdiction and consequently set it aside and allow this writ petition making the Rule absolute.

10. Having regard to the fair stand taken by Sri H. R. Mishra. learned standing counsel, coupled with the fact that the order in question appears to be solitary one having been passed by a new Incumbent in the District bureaucracy, we do

not consider expedient in the interest of justice to impose costs on respondent No. 1. Since despite valid services of notice on respondent Nos. 3 and 4. the landlords have not appeared to contest this proceedings, costs are not awarded against them also.

11. Let a writ of certiorari issue accordingly.

12. The office is directed to handover a copy of this order within one week to Sri H. R. Mishra, learned standing counsel, for its intimation to respondent No. 1.