

Prem Shankar Pandaya vs U.P. Provincial Co-Operative Bank Ltd. ... on 19 August, 1952

Equivalent citations: AIR1953ALL51, AIR 1953 ALLAHABAD 51

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. Prem Shankar Pandaya applies for the issue of directions, orders or writs in the nature of mandamus, prohibition or certiorari declaring that the order of allotment passed on 16-3-1950 in respect of house No. cK/36/7 situate in Chowk Banaras was invalid and illegal, and directing the opposite parties, viz., the U. P. Provincial Co-operative Bank Ltd. and Shri Chunni Lal allottees and the Assistant Rent Control and Eviction Officer, Banaras, and the Rent Control? and Eviction Officer, Banaras, not to take any steps or action on the basis of the allotment order,
2. The facts leading to this application are that the applicant is the owner of the house in suit and had let it to the Bharat Bank Ltd., of Delhi. He himself occupied another rented house. The house was let in 1943 under a lease for five years. The lease was renewed in 1948 and was to expire in January 1958. The applicant, however, persuaded the rentee, the Bharat Bank Ltd. of Delhi, to vacate the house in October 1950 as he wanted it for the purpose of his business. The Bharat Bank vacated the house on 31-10-1950.
3. On 15-11-1950 the applicant sent a notice to the Rent Control and Eviction Officer, Banaras, stating therein that he was staying in a rented house and felt great inconvenience there and that he would be staying in and occupying the whole building for his personal use. He requested the Rent Control and Eviction Officer to allot the house in suit to him. The Rent Control and Eviction Officer, however, allotted the house to opposite-parties NOS. 1 and 2 on 16-11-1950 in ignorance of the applicant's application of 15-11-1950. The applicant then filed the present application on 28-11-1950.
4. The affidavit filed on behalf of Chunni Lal, opposite-party no. 2 mentions that he had applied for the allotment of the house on 4-11-1950 and that the applicant did not really need the house and that his claim that he needed the house for business purposes was not bona fide. It further mentioned that the application dated 15th November was to be heard by the Rent Control and Eviction Officer on 1st December but further proceedings were stayed on account of the interim injunction order from this Court. The order issued by this Court restrained either party from

occupying the house and did not directly order the stay of the hearing of the applicant's application.

5. Learned counsel for the applicant attacked the legality of the allotment order on two grounds. The first contention is that the Rent Control and Eviction Act does not provide for the house owner's not occupying his own house but provided for the control of the letting of that house by the house owner to any other person as to tenant besides its providing for matters relating to rent and eviction. The second contention is that if the Act be held to provide for the house owner's not occupying his own house himself the Act to that extent is ultra vires as it contravenes the provisions of Article 19(1)(f) of the Constitution of India.. "We do not agree with either of the contentions and therefore do not see any force in this application.

6. The Preamble of the U. P. (Temporary) Control of Bent and Eviction Act, 3 of 1947 says :

"An Act to provide for the continuance during a limited period, of powers to control the letting and the rent of residential and non- residential accommodation and to prevent the eviction of tenants therefrom.

* * * * * And whereas due to the shortage of accommodation in the United Provinces it is expedient to provide for the continuance during a limited period of powers to control the letting and the rent of such accommodation and to prevent the eviction of tenants therefrom ;

It is hereby enacted as follows:"

The expression, control of letting of accommodation, is wide enough to cover the case of a house owner's occupying the house himself when it falls vacant. It may be mentioned that the scheme of the Act is that the Bent Control and Eviction Officer does not exercise any jurisdiction over such accommodation which was in the personal occupation of the house owner on the date the Act came into force, and that the Rent Control and Eviction Officer got powers over such accommodation only when the house owner, for any reason, vacated any accommodation in his own possession. The moment any such accommodation falls vacant the Rent Control and Eviction Officer gets control over it for the purposes of its occupation by persons other than the house owner. Thus he gets control of the letting of such accommodation. The Rent Control and Eviction Officer gets control over the accommodation which was in the possession of tenants at the time of the enforcement of the Act. If the house owner requires any such accommodation on its falling vacant for his own use he is, like other persons, to apply to the Rent Control and Eviction Officer and the said officer, on considering his claim along with the claim of others, is free to decide whether the accommodation should be allotted to a tenant or should not be allotted or should be allowed to be occupied by the owner himself. Such powers of the Kent Control and Eviction Officer to consider the claim of the house owner with respect to an accommodation which was in a tenant's possession and had been vacated did come within his powers with respect to the control of the letting of the accommodation.

If the expression 'control the letting' was not to cover such a power, the power of the Bent Control and Eviction Officer of letting would be not of much effective use if the exercise of such power be

considered in relation to the interest of the general public in need of accommodation. In his own interest the house owner would like to rent the accommodation he does not want to use himself to tenants. So long as the amount of rent and the owner's right of ejecting the tenant be in control the interest of the general public do not much suffer on account of the accommodation being let to A or B. The interests of the general public suffer when the accommodation which was available to tenants is reduced by the owner's withdrawing a certain accommodation from further tenancy and by occupying it himself. One can imagine cases in which merely for reasons other than genuine requirements the owner may like to seize the tenancy of his building and to keep it in his own possession. The loss he may suffer in rent may be considered justified on account of his own fancies. We are, therefore, of opinion that the fact that the Act contemplates the control of letting of accommodation does not necessarily mean that it contemplates control of the letting of accommodation only when a house owner evinces a desire to let his building and are of opinion that the control of letting does contemplate the control of the letting of such accommodation which was in the possession of tenants when the Act came into force and of such accommodation which was vacated by owners of the houses after the enforcement of the Act.

7. It is argued for the applicant that the District Magistrate's not letting the owner to occupy his own building amounts to forcing him to let it on rent and this amounts to the requisitioning of the building and then letting it to tenants. Controlling the letting of buildings does mean a restriction on the right of the owner about not letting the building. We do not think that such a compulsion to let a building can amount to requisitioning the building. The Government does not get possession of the building and then deal with it in any manner it likes. It simply arranges for the letting of the house and prevents the owner's withdrawing that accommodation from being available to persons in need of it. It is not necessary that the Act should have provided for the eviction of house owners when it contemplated the prevention of house owners from occupying the houses which were already on rent, as no question of eviction arises. The accommodation is not in possession of the house owner. It is in the possession of tenants. When a tenant vacates the Control and Eviction Officer gets control over it and the owner is not free to occupy the house. If he occupies it and fails to get an allotment made in his favour he would be liable to eviction.

8. Sections 3 and 7B of the Act deal with, the eviction of tenants. Sections 3A, 4, 5 and 6 deal with the rent or other amounts which the house owner could or could not get, and matters relating to the fixation of rent.

9. Section 7 deals with the control of letting and Section 7A. deals with steps to be taken when somebody occupies the accommodation in contravention of the order of the District Magistrate under Section 7 (1). Section 7, Sub-section (1) Clause (a) authorises the District Magistrate (which includes any officer authorised by the District Magistrate to perform any of his functions under the Act) to require a landlord, by general or special order, to give intimation that any accommodation of which he is the landlord is, or has fallen, vacant and to let or not to let such accommodation to any person. The District Magistrate therefore can order the landlord not to let a certain accommodation to any person. This power not to let the accommodation to any person implies the power to allow the landlord to occupy the accommodation himself. Such an interpretation has been put on this provision in *Raman Das v. State of Uttar Pradesh*, 1952 ALL. L. J. 208 (F.b.). There too the applicant

was the owner of the house who wanted to occupy the house vacated by a tenant but was not allowed to do so and the house was allotted to another person by the Rent Control and Eviction Officer. It was observed at p. 211:

"The District Magistrate had under Section 7 (1) (a) of the Act to decide whether the premises were to be let or they should not be let and if they were to be let, to whom they should be let."

It was further observed at the same page in discussing the argument that Rule 6 allowing the District Magistrate to permit a landlord to occupy the accommodation himself, if he bona fide needed it, was *ultra vires*'.

"This argument, we are afraid, does not take account of the last few words of Section 7 (1) (a) which provide that the District Magistrate shall decide whether the accommodation is to be let or not to be let. If the District Magistrate had decided in favour of the applicant he would have then allowed him to occupy it himself and it was not necessary for him to let out the premises to any one."

Such an interpretation is consistent with the proviso in Sub-section (1) of Section 7, U. P. (Temporary) Control of Rent and Eviction Act of 1947, the proviso being:

"Provided that in making the first allotment in the case of any accommodation constructed after 1-7-1946 the District Magistrate shall allot it to the owner, if the owner, not being in occupation of any other house owned by him in that municipality or other contiguous area to which the Act applies, genuinely requires such accommodation for his own residence."

It is to be gathered from the proviso that the District Magistrate can permit a landlord to occupy a certain accommodation in certain circumstances. Such power is given to him when the general powers given to him under Section 7 (1) (a) included the power of refusing the landlord to occupy the accommodation himself which again implied the power to allow him to occupy it. Such a power would be covered by the provisions of Clause (a) of Sub-section (1) of Section 7 only if the expression "not to let such accommodation to any person" he interpreted to include the case of not letting the accommodation to any person in order that the landlord may occupy the accommodation himself and be not restricted to mean simply a power to refuse the letting of accommodation to any particular person. "We are, therefore, of opinion that Section 7, Sub-section (1) (a) empowers the District Magistrate to permit the landlord to occupy the accommodation himself and not to let it when the District Magistrate considers that desirable. The Rules framed by the Government in exercise of its powers under Section 17 of the Act also provide for the case of District Magistrate's ordering that the accommodation be not let to any person but be occupied by the landlord himself. Rule 3 authorises the District Magistrate to make the allotment order within thirty days of the receipt of the intimation about the vacancy of the accommodation sent by the landlord under Section 7 (1) (a). Rule 4 permits the landlord to nominate a tenant in case he receives no notice of allotment within thirty days of the receipt by the District Magistrate of the intimation given by him,

and enjoins the District Magistrate to allot the accommodation to such nominee unless for reasons, to be recorded in writing, he forthwith allots the accommodation to any other person. It does not contemplate the landlord's just intimating the District Magistrate that he himself would occupy the house. Rule 6 deals with the occupation by the landlord and authorises the District Magistrate to permit the landlord to occupy the accommodation himself which has fallen vacant if he be satisfied that the landlord bona fide needed it for his own personal occupation.

10. Article 19(i)(f) of the Constitution provides that all citizens shall have the right to acquire, hold and dispose of property. It is argued that the right to hold and dispose of property includes the right to occupy the house himself or to let it out to others and that therefore Section 7 (1) (a), U. P. (Temporary) Control of Kent and Eviction Act (in [3] of 1947) is ultra vires in so far as it restricts the right of the owner of the house to let or occupy it himself. We concede that the owner's right to hold and dispose of the property is restricted by the provisions of s, 7 (1) (a) authorising the District Magistrate to ask the landlord to let or not to let the accommodation to any person. We are, however, of opinion that the restriction imposed is a reasonable restriction on the exercise of the right to hold and dispose of property. The right given under Article 19(1)(f) of the Constitution is subject to the provision of el. (5) which permits the State to make any law imposing reasonable restrictions on the exercise of that right--in the interest of the general public. It is not disputed that in view of paucity of accommodation available to persons in need of it the control of the letting of accommodation was justified and the restriction imposed was reasonable. "What is contended for the applicant is that restricting the owner of the house from occupying the house himself when he stands in need of it is an unreasonable restriction. The restriction in the circumstances can be considered to be a hard one so far, as the owner of the house is concerned. But we do not think that it can be considered to be unreasonable. As already observed, the scheme of the1 Act is that the Kent Control and Eviction Officer gets control over an accommodation which was in the occupation of tenants when the Act came into force and did not get control over such accommodation which was then in the occupation of the owner himself till such time that the owner decided to vacate the accommodation and thus made it available to prospective tenants. It follows that the owner of the accommodation which thus came within the control of the Kent Control and Eviction Officer did not need that accommodation till the time it fell vacant and may be was in occupation of some other accommodation. He probably needs to withdraw this accommodation from the accommodations available to tenants because of some extra needs of his. He is free to apply to the Rent Control and Eviction Officer for permission to occupy the accommodation. He is not completely, barred from occupying it. The Rent Control and Eviction Officer will consider his needs along with the needs of other persons requiring accommodation and will pass orders in conformity with his views about the greater necessity of the citizens. The power he is exercising is, therefore, a power in the interest of the general public. The necessity for the exercise of such powers arises on account of the paucity of accommodation. We are, therefore, of opinion, as already mentioned, that this restriction on the right of the owner of accommodation to occupy it after it is vacated by a tenant is a reasonable restriction in the interest of the general public and that therefore the provisions of Section 7 (1) (a), U. P. (Temporary) Control of Kent and Eviction Act (3 of 1947) do not contravene Article 19(1), Sub-clause (f) of the Constitution. We may in this connection refer to what was said by the Full Bench in Raman Das v. State of Uttar Pradesh, 1952 ALL L. j, 208 (F.b.) at p. 212 in dealing with a similar contention. They said:

"Learned counsel was not able to explain how his rights to acquire, hold and dispose of property were being interfered with by the order of the allotment officer. In any case, as we have already said, we cannot say that it imposes any restriction on the rights of the landlords which is not reasonable."

11. We, therefore, reject this application with costs and vacate the interim injunction.