

Mannu Lal vs Chakradhar Hans on 25 March, 1952

Equivalent citations: AIR1952ALL859, AIR 1952 ALLAHABAD 859

JUDGMENT

Malik, C.J.

1. This case raises a very short point but a point of some importance. The plaintiff was the owner of a house situate in Lucknow which had been allotted by the Rent Control Officer under the Rent Control and Eviction Act (III [3] of 1947). The plaintiff wanted to file a suit for ejectment and applied to the Rent Control and Eviction Officer, Lucknow, for permission to bring a suit on 18-12-1948. The Rent Control Officer gave him requisite permission. On 12-2-1949, however, he changed his mind and withdrew the previous permission granted by him on 28-12-1948, and informed the plaintiff that he had withdrawn the said order and the plaintiff could not, therefore, file a suit for ejectment. In spite of the second order passed by the Rent Control Officer the plaintiff filed a suit for ejectment in the Court of the learned Munsif, South Lucknow, and claimed that the previous sanction granted to him was irrevocable and that the second order cancelling the same was beyond the powers of the Rent Control Officer. It was further contended that the second order was in fact not an order passed by the Rent Control Officer but it was an order dictated to him by the District Magistrate and the Rent Control Officer had, therefore, not exercised any discretion in the matter.

2. Both the contentions prevailed in the lower Courts and the plaintiff's suit for ejectment was decreed.

3. The case thereafter came up in second appeal to this Court and a learned single Judge of this Court held that the Rent Control Officer had the inherent jurisdiction to revoke the sanction and the sanction having been revoked no further question arose and the plaintiff's suit must therefore fail. The learned Judge, however, gave the plaintiff leave to file a third appeal.

4. Besides the two points urged before the lower Courts learned Counsel has raised a third point that the Rent Control Officer was bound to give him an opportunity to show cause before cancelling the first order passed by him.

5. The main question for consideration in this case is whether the Rent Control Officer was exercising a judicial or a quasi-judicial power under the Act, or that the powers conferred upon him were merely administrative or executive powers which he had to exercise according to his discretion. The Act does not in so many words confer any power on the District Magistrate to permit a suit being filed.

6. The Act provides that no suit for ejectment of a tenant shall be filed except on grounds (a) to (f) of Section 3 in the Act. If there are no such grounds (a) to (f) then a suit for ejectment of a tenant can be filed only if permission is obtained from the District Magistrate to file a suit for ejectment. This no doubt, implies that the District Magistrate has power to grant the permission to file a suit and if he does grant permission then a suit would be maintainable. Similarly there is no specific provision in the Act authorising the District Magistrate to delegate his powers to the Rent Control Officer. The provision is made in the definition Clause 2 (d) which is as follows:

"District Magistrate includes an officer authorised by the District Magistrate to perform any of his functions under this Act".

Nowhere in the Act is there any mention of either the delegation of powers by the District Magistrate or of the grounds on which permission is to be given by the District Magistrate for a suit for ejectment. It appears to us that the legislature considered what in the present difficult circumstances where accommodation was so limited, would be just ground for ejectment of a tenant and enunciated those principles in Clauses (a) to (f) of Section 3 and then made a general provision that in view of the complexities and various considerations that might arise, which it might be difficult to enunciate in the Act itself, it was best to leave a discretion in the District Magistrate who might allow a suit to be filed for ejectment when in his view it was just and proper. There are no guiding principles laid down in the Act itself and it is impossible to enunciate any principles which are to guide the actions of the District Magistrate and which he has to take into consideration when deciding the question whether he should or should not grant permission to file a suit. Though no doubt he must exercise his discretion honestly and not capriciously but the matter is left entirely to his discretion. In these circumstances the power exercised by him must be deemed to be administrative or executive power and not a judicial or quasi-judicial power. The question has been considered by a bench of this Court of which one of us was a member, in *Avadhesh Pratap Singh v. State of Uttar Pradesh*, A. I. R. 1952 ALL. 63 where it was laid down 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 whenever 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 circumstances 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".

Here there can be no doubt that the Magistrate is entitled to act in his discretion and, as we have already said, there are no guiding principles in any way to limit his discretion which no doubt should be honestly exercised. In the circumstances the power being merely administrative it cannot be said

that if on further considerations the learned Magistrate thought it proper to revise his previous order he had no jurisdiction to do so. Our finding that the power was an administrative power also answers the third objection that an opportunity should have been given to the plaintiff to show cause before the previous order passed by the Rent Control Officer could be cancelled. An administrative or executive power has to be exercised always subject to the control of the superior officers and we see no objection to the second order having been passed at the directions of the District Magistrate.

7. The result, therefore, is that the appeal has no force and we dismiss it with costs.