

D.P. Halwasiya vs The State on 26 April, 1952

Equivalent citations: AIR1953ALL45, AIR 1953 ALLAHABAD 45

ORDER

Misra, J.

1. This is an application under Section 561-A, Criminal P. C., for quashing certain proceedings pending in the Court of the City Magistrate, Lucknow so far as they relate to the applicant, D. P. Halwasiya,

2. The case arose on the complaint made by the senior inspector of the Bent Control and Eviction Department under Section 8, U. P. (Temporary) Control of Rent and Eviction (Amendment) Act, 1947, for contravention of Sections 7 and 9 of that enactment. Section 8 says that :

"Any person who contravenes any of the provisions of this Act or any order made in pursuance thereof shall be punishable on conviction with simple imprisonment for a terra which may extend to six months or with fine up to Rs. 1000 or with both."

Section 7 lays down that :

"The District Magistrate may, by general or special order, require the landlord 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."

It goes on to say that in cases, where in pursuance of an order of the District Magistrate passed as aforesaid, the vacancy of any accommodation is required to be reported, the tenant occupying such accommodation, shall within seven days of his vacating the same, give intimation thereof in writing to the District Magistrate or such officer as the District Magistrate may appoint in this behalf. It would seem that the District Magistrate of Lucknow acting under Section 7 passed an order on 8-3-1949, making it incumbent upon every landlord within the municipal limits of Lucknow and the limits of the notified areas of Alarnbagh and Charbagh to give immediate intimation of the fact of the falling vacant of any accommodation of which he is the landlord to the Bent Control and Eviction Officer, Lucknow. Such intimation according to the notification had to be given in writing in the prescribed form not later than seven days after the date on which the accommodation fell vacant. The order further provided that no landlord shall let out such accommodation as is mentioned above to any person for a period of fifteen days from the date of receipt of the intimation by the Bent Control and Eviction Officer, Lucknow, and he shall on receipt of the allotment order from the District Magistrate or the Kent Control and Eviction Officer, Lucknow, within that period let out the accommodation only to the persons specified in that order.

3. Section 9, the contravention of which was also complained of provides :

"Every order made under Clause (bb) of Sub-rule (2) of Rule 81, Defence of India Rules, in respect of any of the matters specified in or under this Act shall, so far as it could valid-ly have been made by the Provincial Government or the District Magistrate, continue in force and be deemed to have been made under this Act until it is superseded or modified by a competent authority under this Act and all orders made and directions given under any such order shall also continue in force until superseded or modified by a competent authority."

The applicant is one of the three partners of the firm Ganesh Das Ram Gopal which owns a large shopping centre constructed in April 1948 in Hazratganj, Lucknow and is known as Halwasiya Market. Shops NOS. 7 and 9 in the aforesaid market were held in tenancy by one Sri Manohar Lal Mullick till 8th January 1951. On the last mentioned date this gentleman wrote to Messrs. Ganesh Das Ram Gopal intimating that he was giving up his tenancy and Messrs. Bhatia, Brothers would use the premises which were in his occupation. The letter is of importance and its relevant parts may well be reproduced. It states :

" You are aware, my late lamented father breathed his last on 16th November 1960. I have, therefore, decided to close my shop at Halwasiya Market and intend to sell all my furniture to Messrs. Bhatia Brothers who will also use the above mentioned shops which were under my occupation. I trust, you will kindly recognise him as your tenant in place of me and also cause having the allotment made by the Rent Control and Eviction Officer, if necessary."

4. On 10th January 1951 the applicant forwarded a copy of the aforementioned letter to the Rent Control and Eviction Officer, Lucknow, with a covering letter of his own saying :

"We are (inclosing herewith a copy of a letter received from M/s Mullicky which in self explanatory for your information. We have no objection if the shops are allotted to Messrs Bhatia Brothers."

5. The Rent Control and Eviction Officer, it would seem, did not communicate to the applicant any orders of allotment of the shops referred to above within the time specified in the order of the District Magistrate dated 8th March 1949. Reference in this connection may also be made to Rules 8 and 4 framed under Section 17 of the Act :

"3. Allotment order--The District Magistrate shall make an allotment order within thirty days of the receipt of the intimation sent by the landlord under Section 7 (1) (a) of the Act and shall give notice thereof to the landlord."

"4. Landlord's right to let.--If the landlord receives no notice from the District Magistrate within 80 days of the receipt by District Magistrate of intimation given by the landlord under Section 7 (1) (a) the landlord may nominate it tenant and the

District Magistrate shall allot the accommodation to his nominee unless, for reasons to be recorded in writing he forthwith allots the accommodation to any other person."

The papers, produced by the complainant in the Court of the City Magistrate, disclose that a senior inspector of the department was deputed to carry out an inquiry on the information contained in the letter of Messrs. Ganesh Das Ram Gopal. According to his report which is dated 22nd January 1951, the furniture of the shops was sold by Messrs. Mullick and Company to Messrs. Bhatia Brothers (who were at that time in occupation) without having given any intimation of the fact to the department. When this report reached the Rent Control and Eviction Officer to whom the District Magistrate of Lucknow has delegated his powers, he inquired :

"What is the real position ? Have the premises, as re-reported, been occupied by Messrs. Bhatia Brothers ? If so, please issue notice and ask them to explain why possession has been taken without proper allotment order."

Notice was accordingly issued to Messrs. Bhatia Brothers and a copy thereof was endorsed to the firm Ganesh Das Ram Gopal on 3rd February 1961. The occupiers of the premises in acknowledging the communication submitted that they had purchased the furniture from Messrs. Mullick & Co. and had also the consent of the landlord who had already written to the department for necessary allotment. They, however, apologized 'profoundly' for the irregularity committed by them and said that they would be grateful if their action was now regularised. Matters appear to have remained in this condition till 12th May 1951, when a further report was submitted by the senior inspector apparently communicating to the Rent Control and Eviction Officer the above representation of Messrs. Bhatia Brothers and saying that, in order to avoid further complications, it was desirable to regularise their occupation as requested. It would seem that this report along with the reply of Messrs. Bhatia Brothers was laid before the allotment committee and on 21st May 1951, the Rent Control and Eviction Officer passed an order for prosecution of the landlord as well as of the tenant whose occupation, he thought, was unauthorized. Pursuant to the above order, the senior inspector submitted a charge-sheet to the Court of the City Magistrate, Lucknow, on 19th June 1961, against Messrs. Ganesh Das Ram Gopal and Messrs. Bhatia Brothers and in the details of the offence committed by the accused, he mentioned that the first named accused did not wait for the orders of the Rent Control and Eviction Officer, Lucknow, and accepted the tenancy of Messrs. Bhatia Brothers, accused 2, thus contravening Sections 7 and 9, U. P. Temporary Control of Rent and Eviction Act, 1947 by letting out the shop in question to accused 2 in the month of January 1951 without the permission of the Rent Control and Eviction Officer, Lucknow, an act for which he is punishable under Section 8 of the Act.

It was further stated that accused 2 occupied the premises without proper allotment order from the Rent Control and Eviction Officer, Lucknow, and in doing so he violated the provisions of Section 11 of the Act. There is an order of the Additional District Magistrate on the record, which was passed presumably in July 1951, saying that from a perusal of the file, he found that a prima facie case under Sections 7, 9 and 8, U. P. (Temporary) Control of Rent and Eviction (Amendment) Act, 1948, was made out against accused 1 Messrs. Ganesh Das Ram Gopal and against Messrs. Bhatia Brothers. He purported to sanction the prosecution under the said sections of the Act and to send

the ease to the City Magistrate, Lucknow, for trial. It is not clear under what provision of law this sanction was accorded. Apparently there is some rule whereunder such prior sanction for the prosecution of a person under the penal provisions of the Act is made necessary in order to safeguard people against unnecessary victimisation. I take it that this sanction must have been communicated to the City Magistrate in due course. After the receipt of it the City Magistrate, unmindful of the provisions of Section 12, ordered the Station Officer, Hazratganj Kotwali to produce before him on 2-8-1951, "the Arm Messrs. Ganesh Das Ram Gopal and firm Bhatia Brothers." I notice also that the offence under A. 8 is triable as a summons case but the learned Magistrate some, how persuaded himself to believe that it was necessary to secure the bodily presence of the accused through, the police agency instead of the normal procedure which the law prescribes in such cases.

6. Information of the impending prosecution was, it would seem, meanwhile received by the applicant for he appeared in Court on 18-8-1951, and applied for and secured an order from the learned Magistrate excusing his personal attendance on future dates. Thereafter he applied to this Court on 23-8-1951 under Section 561A, Criminal P. C. praying that in the circumstances disclosed in his petition and the accompanying affidavit, there was no case against him and his prosecution by the department constituted an abuse of the process of the Court.

7. The facts narrated above have been taken almost entirely from the documents which are on the file of the learned Magistrate. The letter of Sri Manohar Lal dated 8-1-1951 leaves no room for doubt that Messrs. Bhatia Brothers were let into occupation of the premises by him without any authority of the landlord. He only 'trusted' that the firm would recognize them as tenants. It is not alleged that this recognition was accorded by the owners. The communication sent by the applicant to the Rent Control and Eviction Officer puts it beyond dispute that he conveyed information to the department in due course of all the facts that were known to him till 10-1-1951 and it is fair presumption that this was done in order to facilitate the allotment of the shops to a new tenant the fact that he intimated that he would have no objection if the allotment was made to Messrs. Bhatia Brothers indicates that he had not till then accepted Messrs. Bhatia as tenants. The language of the letter clearly implies that before accepting the recommendation of Mr. Mullick, Mr. Halwasiya would await the order of allotment by the officer. This, apparently, is all that the landlord was bound to do under the rules. I need hardly stress that the Act does not impose on him the duty to take measures against the squatter for his ejection either forcibly or through Court. I am clear therefore that the mere fact that the applicant did not bodily turn out the firm of Messrs. Bhatia Brothers from the premises cannot be treated as the landlord's consent or as amounting to creation of tenancy or violation of the Act and the Rules or orders made thereunder. There is also the fact that the Rent Control and Eviction Officer himself failed to comply with the order of the District Magistrate promulgated on 8-8-1949, and Rule 3 of the Rules framed under Section 17. It will be repetition that these rules made it essential that the District Magistrate or the officer who was deputizing for him must let out the shops within thirty days of the intimation sent to him by the tenant or by the landlord and if he did not do so, the landlord could engage with a tenant of his own choice.

8. The documents on the record do not indicate any action after 6-1-1951, on the part of the landlord which could amount to creation of tenancy in the now occupants of shops Nos. 7/9. I am informed

that apart from these documents, there is no other evidence in the possession of the complainant which might go to show that the premises were lot out by the applicant at any time after the aforementioned date. It is said in the charge-sheet submitted by the complainant that the Senior Inspector of the Rent Control and Eviction Department would depose that the second accused is in possession of the shops since January 1951. I was informed that the Senior Inspector would be prepared to state further that during the course of his enquiries he was given information to the effect that Messrs. Ganesh Das Ram Gopal lot out the shops to Messrs. Bhatia Brothers later. This kind of evidence would obviously not carry the matter any further and I am convinced that if the Senior Inspector hereafter deposes that he learnt from some informant that the landlord actually let out the premises to Messrs. Bhatia Brothers between 10-1-1951, and the date of his report, such statement would be worse than useless.

9. It would be recalled that in the order of the Additional District Magistrate sanctioning the applicant's prosecution, it was stated that a case against the applicant for infringement of Sections 7 and 9 had been made out by complainant. It has already been observed above that the landlord performed the duty enjoined upon him by H. 7 (1) (a), namely, the duty to give intimation that the shops Nos. 7 and 9 in Halwasiya Market of which he is the landlord had fallen vacant. It is true that the information was not sent on the proscribed form, but this was not the gravamen of the charge. There is nothing to show that the firm or any of its partners was called upon at any time to lot or not to let that accommodation to any person and there can, therefore, under the circumstances be no violation of the later part of the provisions of Section 7. So far as Section 9 is concerned, the learned counsel for the opposite party admits that it has no hearing, whatsoever on the facts in possession of the complainant. In these circumstances I have no hesitation in holding that the prosecution of the applicant has been launched somewhat lightly. Indeed I am constrained to say that in taking action against the applicant, the department has failed to show that it acted with due sense of responsibility.

10. Under Section 661A, Criminal P. C., this Court has full power to prevent abuse of the process of the Court and unnecessary harassment of the accused by quashing or stopping proceedings or by passing other orders which might arrest such abuse or harassment. It is true that ordinarily such a course is not adopted when the proceedings in the subordinate Court are in an interlocutory stage but the obligation to act under the section is rendered imperative whenever circumstances calling for the immediate use of those powers come to the notice of the Court. In the present case it is expedient in the ends of justice that the proceedings against the applicant should be quashed. I order accordingly.

11. In order to remove any possible doubt later I would like to add that I have not taken into consideration the question whether or not the prosecution of Messrs. Bhatia Brothers is justified. The present order, therefore, is not intended to affect the proceedings so far as the second accused is concerned.