

Mahabir Prasad vs District Magistrate, Kanpur And Ors. on 1 March, 1955

Equivalent citations: AIR1955ALL501, AIR 1955 ALLAHABAD 501

ORDER

Brij Mohan Lall, J.

1. One of the shops on the ground floor of house No. 40/-1, Parade, Kanpur, fell vacant in the first week of June 1951. Several persons including Mahabir Prasad (petitioner) and Bansidhar (opposite party No. 3) were desirous of taking the shop on rent. They applied for allotment to the Rent Control and Eviction Officer who, according to the common case of the parties, is a person authorised by the District Magistrate to perform his functions under the Rent Control and Eviction Act (3 of 1947), and is, therefore, a "District Magistrate" within the meaning of the term as defined in Section 2 (d) of the Act.

The Rent Control and Eviction Officer allotted the shop in question to the petitioner on 14-6-51, Bansidhar, however, managed to occupy the shop. This occupation was obviously unauthorized.

2. The Rent Control and Eviction Officer took steps under Section 7A of the Act and passed an order for Bansidhar's eviction. The latter went up in revision to the Commissioner, Allahabad-cum-Jhansi division but the latter by his order dated 4-10-1952 dismissed the said revision.

3. Having failed before the executive authorities, Bansidhar turned to civil Courts and instituted a suit against the petitioner for an injunction restraining him from taking possession. He obtained a temporary injunction to that effect, but the suit was ultimately dismissed and the injunction was discharged. Bansidhar preferred an appeal and sought an injunction from the District Judge who also refused it. Thereafter he came to this Court and obtained an interim injunction which also was discharged on 28-4-53.

4. After all attempts on Bansidhar's part to seek protection of his unauthorised occupation of the disputed premises from civil Courts had failed the petitioner moved the Rent Control and Eviction Officer to enforce the order which he had passed for Bansidhar's eviction. On 11-5-53 the said officer directed the Station Officer, Kotwali to dispossess Bansidhar and to deliver possession to the petitioner. The very next day, i. e., on 12-5-53 Bansidhar approached the District Magistrate and prayed that fresh enquiry might be held and further proceedings for his eviction might be stayed.

The petitioner objected, but in spite of his objections the District Magistrate passed an order on

18-9-53 directing the Rent Control and Eviction Officer to cancel the allotment made by him in petitioner's favour and to allot the shop to Bansidhar. Acting on this command the Rent Control and Eviction Officer passed an order on 26-9-53 allotting the shop to Bansidhar "as demanded by the District Magistrate".

5. The petitioner has come up to this Court and he prays that in exercise of our power under Article 226 of the Constitution we may issue a writ of certiorari quashing the District Magistrate's order dated 18-9-53 and the Rent Control and Eviction Officer's order dated 26-9-53 and may further issue a writ of mandamus directing the said officers to enforce the Rent Control and Eviction Officer's order dated 11-5-53.

6. The power of an authority to modify its own order or the order of a co-ordinate or subordinate authority varies according to the nature of the order. Ordinarily finality attaches to a judicial or a quasi-judicial order. Such an order when passed is supposed to dispose of the dispute once for all. If the authority passing the order wishes to modify or rescind the said order, it has to act within the provisions of law conferring power of review. Similarly, if it is desired to modify or cancel judicial or quasi-judicial order passed by a subordinate authority or an authority exercising concurrent jurisdiction, the power must be expressly conferred by some provisions of law.

7. Greater latitude is permissible in the case of an administrative or executive order. Such an order may be modified or revoked by the authority passing it under Section 21, U. P. General Clauses Act (1 of 1904). This section provides that "Where, by any United Provinces Act, a power to issue notification, orders, rule or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary, or rescind any notifications, orders, rules or bye-laws so issued".

8. A subsidiary question will arise whether the power to modify or recall its own order can be exercised by an authority in exercise of its own discretion only or whether it can also be exercised in a case in which the said authority, if left to itself, would never interfere with it but is acting under the command of a superior authority. This point will be considered hereafter along with the other important question as to how far a superior authority can interfere with an executive or administrative order passed by an inferior authority in exercise of its statutory powers.

9. Before entering into this question it is necessary to ascertain whether an order of allotment is an administrative or executive order or an order of a judicial or quasi-judicial nature. An order of judicial or quasi-judicial nature does not mean that it should have been passed by a Court of law. The term "judicial or quasi-judicial" has been given a liberal interpretation so as to include orders by tribunals or authorities other than the regular Courts of justice. The Supreme Court had to interpret the term "judicial or quasi-judicial" order in the case of -- 'Province of Bombay v. Khushaldas S. Advani', AIR 1950 SC 222 (A).

They had laid down that the writ of certiorari could issue in the case of judicial or quasi-judicial orders and this led them to consider as to what kinds of orders were judicial or quasi-judicial orders. Kania C. J. quoted with approval at pp. 224-225 a dictum of Scrutton L. T. in --King v. London

County Council', (1931J 2 KB 215 (B) at p. 233 which runs as follows :

"It is not necessary that it should be a Court in the sense in which this Court is a Court; it is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition; and it is not necessary to be strictly a Court; if it is a tribunal which has to decide rights after hearing evidence and opposition, it is amenable to the writ of certiorari."

Thereafter, Kania C. J. referred to the dictum of Slesser L. J. in the same case where it was held that in order to issue a writ of certiorari four things were necessary, viz., the tribunal whose order is sought to be quashed (1) having legal authority, (2) to determine questions effecting rights of subjects, (3) having the duty to act judicially, (4) has acted in excess of their legal authority,

10. Summing up his own views on p. 226 Kania C. J. observed that:

"It seems to me that true position is that when the law under which the authority is making a decision itself requires a judicial approach, the decision will be quasi-judicial."

Fazl Ali J. expressed himself on p. 228 as follows:

"It may be safely laid down that an order will be a judicial or quasi-judicial order if it is made by a Court or a Judge, or by some person or authority who. Is legally bound or authorised to act as if he was a Court or a Judge. To act as a Court or a Judge necessarily involves giving an opportunity to the party who is to be affected by an order to make a representation making some kind of inquiry, hearing and weighing evidence, if any, and considering all the facts and circum-stances bearing on the merits of a controversy, be-fore any decision affecting the rights of one or more parties is arrived at The procedure to be followed may not be a* elaborate as in a Court of law and it may be very summary, but it must contain the essential elements of judicial procedure as indicated by me,"

11. It will' therefore follow that to constitute a quasi-judicial or a judicial order, the authority passing the order should be under an obligation to hear the parties, to make an enquiry, to weigh the evidence and to base its conclusion thereon. Its decision should be based on the re-suit of the enquiry and not on its own discretion.

12. To the same effect is a decision of a Bench of this Court reported in -- 'Avadhesh Pratap Singh v. State of Uttar Pradesh', AIR 1952 All 63 (C). This latter decision was followed by another Bench of this Court in -- 'Mannu Lal v. Chakradhar Hans', AIR 1952 All 859 (D).

13. Judging an allotment order passed under Section 7 by this standard, one finds that the allotting authority is riot bound to hold an enquiry, to hear the parties or to permit them to produce evidence. It may in certain cases act on its own discretion irrespective of the respective needs of the different

applicants. One very often comes across a case where an officer transferred to a new station has been waiting for sometime for accommodation but another officer, a more recent arrival, is given a vacant accommodation because allotment to him will serve some public purpose or facilitate Government work.

In such a case if the personal needs only of the two claimants are considered the needs of the former are certainly greater than those of the latter. He and members of his family had been suffering inconvenience for want of proper accommodation for a much longer period than his rival and had much stronger claim than the newly arrived officer. But the allotting officer can, in the exercise of his discretion and in public interest, ignore the right of the officer who has been waiting from before.

In the circumstances it is obvious that the decision which the allotting officer has to make is not a judicial or quasi-judicial order, but an order which rests mainly in his discretion, although it may be conceded that the discretion is to be exercised neither capriciously nor arbitrarily. An exactly similar point arose for decision in an un-reported case viz., -- 'Sri Nath v. Commissioner of Allahabad', qvil Misc. Writ No. 7563 of 1951 (All.) (E) decided by a Division Bench of this Court on 27-7-1951. It was held in that case that an order of allotment passed under Section 7, Rent Control and Eviction Act was an executive or administrative order and not a judicial or quasi-judicial order. With this decision I am in entire agreement.

14. Reference was also made to the case of -- 'Chandrabhan v. Rent Control and Eviction Officer, Agra', AIR 1954 All 6 (F) in which it was held that proceedings under R, 4 of the Rules made under Section 17 of the Act were quasi-judicial proceedings. I have gone through that decision. I find nothing in that decision to support the conclusion that a decision under Section 7 is also a quasi-judicial decision. The remarks made in that case are confined to the case of Rule 4 and are not applicable to the present case. So far as an allotment order under Section 7 is concerned I am definitely of the opinion that it is an administrative or executive order.

15. As a result of the above finding it will follow that the Rent Control and Eviction Officer can modify or cancel his previous order of allotment. But this power can be exercised so long as, the allottee acting in pursuance of the order does not take possession of the accommodation. After possession has been taken over by the allottee in pursuance of the allotment order the Rent Control and Eviction Officer's power comes to an end (except in a case where prder was secured by fraud, misrepresentation of facts or some other undesirable method) because the accommodation is no longer vacant nor is about to fall vacant.

16. The next question that arises for decision is whether the District Magistrate can exercise the power of allotment under the Rent Control and Eviction Act after having empowered the Rent Control and Eviction Officer to act as "District Magistrate" under the Act. The mere fact that another officer has also been empowered under the Act does not take away the District Magistrate's own power. Both of them can exercise concurrent jurisdiction. If a petitioner instead of applying to the Rent Control and Eviction Officer approaches the District Magistrate the latter has certainly jurisdiction to pass a suitable order thereon.

But a power under concurrent jurisdiction can be exercised so long as it has not been exercised in respect of the same matter by another co-ordinate authority. To hold that the District Magistrate can interfere with an order of the Rent Control and Eviction Officer even after that Officer has passed an order will mean concerting an authority of concurrent jurisdiction into a superior authority.

Moreover anomalous results will follow from such a proposition.

If the District Magistrate exercising a concurrent jurisdiction is held entitled to upset the order of the Rent Control and Eviction Officer the latter can, for similar reason, again upset the order of the District Magistrate. This will lead to utter confusion. This could never have been the intention of law.

17. Reference was made in this connection to the Full Bench case of -- 'Abdul Hamid v. Smt. Fatima Begum', AIR 1955 All 36 (G). I have gone through this case and am of opinion that it does not support the proposition that a District Magistrate can set aside the Rent Control and Eviction Officer's order. That was a case in which the landlord had made an application under Section 3 of the Act for permission to sue his tenant for ejectment. The Rent Control and Eviction Officer was throughout acting under the guidance and supervision of the District Magistrate.

From the very beginning he was acting at the command and bidding of the District Magistrate and even where he was of a different opinion he never enforced his own opinion but gave effect to the opinion expressed by the District Magistrate. The District Magistrate directed him at a certain stage to set aside an order of his and he did. Malik C. J., delivering the judgment of the Full Bench, remarked as follows :

"If the Rent Control and Eviction Officer had been acting independently and had passed final orders which are now revisable by the Commissioner and then by the Local Government the District Magistrate who has neither appellate nor revisional powers may not be entitled to interfere, but where, as in this case, the District Magistrate has all along been functioning through the Rent Control and Eviction Officer and bearing in mind that the orders passed were administrative or executive orders, it cannot be said that the order passed by the Magistrate on 6-4-1949, was without jurisdiction as by that order he was merely recalling a permission which had been granted at his instance."

It is obvious from this finding that the Rent Control and Eviction Officer was really a mouthpiece of the District Magistrate. The Full Bench held that "in the circumstances of this case" the District Magistrate could cancel the order passed by the Rent Control and Eviction Officer. As pointed out above, the Full Bench was of the opinion that the position would have been different if the Rent Control and Eviction Officer "had been acting independently." It is therefore obvious that this decision is no authority for the proposition that a District Magistrate can set aside the order of a Rent Control and Eviction Officer on the ground that he has concurrent jurisdiction.

18. The point in question was considered in the case of -- 'R. S. Seth v. Girja Shankar Sri-vastava', AIR 1952 All 819 (H), where it was held that a District Magistrate who had authorised the Rent Control and Eviction Officer to act for him could not rescind the order previously passed by the former.

19. A case which contains some observations to the contrary is to be found in -- 'Jang Bahadur v. District Magistrate, Benaras', AIR 1954 All 745 (I). In that case a learned Judge of this Court remarked on p. 747 as follows.

"It is obvious that if two officers exercise the same power one cannot revise the order of another, but if the jurisdiction is concurrent it may be possible for one to review the order of another."

This remark was, however, mere 'obiter dictum' because the learned Judge himself observed a little later as follows:

"In this case before me also it appears unnecessary to decide this question for the purpose of this writ application."

20. As I read this judgment I find that the learned Judge simply contemplated the possibility of a certain view being taken without having committed himself to that view. There is therefore no definite decision to that effect before me. I am, therefore, of the opinion that this authority does not lay down the proposition that where two persons exercise concurrent jurisdiction one can upset the order of another. My own view is that he cannot.

21. The next question that arises for decision is whether the District Magistrate acting not as an authority of co-ordinate jurisdiction but as a superior authority can upset the order of the Rent Control and Eviction Officer. On this point also I am of the opinion that he cannot. Where a power is exercised by a public servant under statutory sanction, that power can be exercised by him alone and not by any superior authority. The superior authority may give him suggestion and may even ask him to reconsider his decision leaving to him the freedom to change its mind or not.

If in such circumstances the officer who originally passed the order, changes his mind and arrives at a contrary conclusion, the order will be perfectly valid because it would be the order of the original authority and not of the higher authority. But the higher authority cannot by its own order set aside the order of the inferior authority and assume to itself an appellate or revisional power which has not been conferred upon it by the statute. If it were possible to hold that the District Magistrate by reason of being a superior authority can upset the Rent Control and Eviction Officer's order it will follow, from the same process of reasoning, that the Commissioner can also by reason of being a higher authority upset the District Magistrate's order and the State Government can upset the Commissioner's order.

22. In the aforesaid unreported Civil Misc. Writ No. 7563 of 1951 (All.) (E) the Commissioner had set aside the allotment order of the Rent Control and Eviction Officer. This Court held that no such

power was vested in the Commissioner.

23. In the case of AIR 1952 All 819 (H) also it was held that the District Magistrate acting as a superior authority could not set aside the Order of the Rent Control and Eviction Officer.

24. Reference was made by the learned Counsel for the opposite party to the case of AIR 1952 All 859 (D). In that case it was observed in the penultimate paragraph of the judgment that "An administrative or executive power is to be exercised always subject to the control of a superior officer and we see no objection to the second order having been passed at the direction of the District Magistrate."

25. It may be pointed out that although there was a suggestion in that case by the petitioner that the second order had been dictated by the District Magistrate there was no finding to that effect by the Court. There is nothing in the judgment to lend support to the suggestion that the District Magistrate had coerced the will of the Rent Control and Eviction Officer and had substituted his own discretion in place of the discretion of the Rent Control and Eviction Officer. What the learned Chief Justice meant by the above quoted remark was that the District. Magistrate could suggest new facts and new aspects of the case to the Rent Control and Eviction Officer and could ask him to reconsider the matter in the light of those suggestions.

Had it been his Lordship's intention to say that the District Magistrate could substitute his own discretion for the discretion of the Rent Control and Eviction Officer a more explicit language would have been used. It may again be pointed out that in the Full Bench case cited above the Hon'ble the Chief Justice has remarked that where the Rent Control and Eviction Officer has been acting independently different considerations arise and it is not possible for the District Magistrate to interfere. His remarks relied upon by the learned counsel for the opposite party are to be interpreted in the light of his observations in the Full Bench case.

Obviously his Lordship meant that the District Magistrate could ask the Rent Control & Eviction Officer to reconsider the matter. He did not mean to hold that the District Magistrate could overrule the decision of the Rent Control & Eviction Officer, This would mean conferring right of appeal or revision where no such right has been conferred by the statute. I have therefore come to the conclusion that a superior authority cannot, where a power to that effect is not conferred on it by statute, set aside an order of a subordinate authority passed in exercise of the statutory powers.

26. The next point that arises for decision is whether the Rent Control and Eviction Officer could lawfully cancel his own order when that cancellation was not the result of the exercise of his own discretion but was brought about in pursuance of an order of a superior authority. A similar question arose for decision in the aforesaid Writ Petn. No. 7563 of 1951 (All.) (E). In that case the Rent Control and Eviction Officer had cancelled his order in obedience to the Commissioner's command. This Court held that the revised order although passed by the Rent Control and Eviction Officer could not be upheld by invoking the aid of Section 21, General Clauses Act. The reason is obvious.

Where an order is passed in the aforesaid circumstances it is not the Rent Control and Eviction Officer who is passing the order and who alone can modify or revise his previous order by virtue of Section 21. It is really the order of a superior authority and that authority cannot be permitted to do, through the agency of its subordinates, what it could not do itself. I am, therefore, of the opinion that although the order dated 26-9-53 has ostensibly been passed by the Rent Control and Eviction Officer, it is liable to be set aside.

27. It may also be pointed out that when notice was issued to Bansidhar under Section 7A he had a right under Section 7A(2) to show that the order of allotment passed under Section 7(2) had not been duly passed. In other words, he could question the order of allotment. He could do the same when the revision was taken to the Commissioner. When the Commissioner dismissed the revision he in substance upheld the order of allotment. Therefore the District Magistrate has in this case not only set aside the Rent Control and Eviction Officer's order but has also cancelled the order which had been affirmed by a higher authority, viz., the Commissioner.

This is an additional ground for setting aside the District Magistrate's order and the order passed by the Rent Control and Eviction Officer in pursuance thereof.

28. It remains to determine the nature of writs that can issue in this case, The petitioner has asked for a writ of certiorari to quash the orders dated 18-9-53 and 26-9-53 and a writ of mandamus to compel the District Magistrate and the Rent Control and Eviction Officer to enforce the order dated 11-5-1953. Since I have come to the conclusion that an order of allotment is not a judicial or a quasi-judicial order a writ of certiorari cannot issue. But in order to give redress to the petitioner against the illegal orders passed by the District Magistrate and on his command by the Rent Control and Eviction Officer this Court has jurisdiction to issue a writ of any other description as the situation may demand.

In the circumstances of the present case I direct that a writ of prohibition shall issue to the District Magistrate and the Rent Control and Eviction Officer forbidding them to enforce the former's order dated 18-9-53 and the latter's order dated 26-9-53. A writ of mandamus shall also issue to them directing them to give effect to the order dated 11-5-53, to evict Bansidhar from the shop in question and deliver possession thereof to the petitioner.

29. The petitioner shall get his costs from the opposite parties.

Mootham, C.J.

30. I am of the same opinion. The two questions which arise in this case are whether the order of allotment made by the Rent Control and Eviction Officer on 14-6-1951 under Section 7, U. P. (Temporary) Control of Rent and Eviction Act, 1947, is an administrative order or a quasi-judicial order, and if it be the former whether it was validly cancelled by the subsequent order of the Rent Control and Eviction Officer, dated 26-9-1953.

31. The first question is in my opinion concluded by the Bench decision of this Court in the unreported Writ Petn. No. 7563 of 1951 (All.) (E), decided on 27-7-1951. In that case it was held that an order of allotment made under Section 7 of the Act is an administrative order. It has been suggested that there is some conflict between the decision in that case and the decision in AIR 1954 All 6 (F), to which I was a party. In that case we said that-

"when the Rent Control and Eviction Officer decides a question of fact the result of which determines the right of a person to the benefit of E. 4" -- that is of the Rules made under the Act -- "he acts in a quasi-judicial capacity. Although the act of issuing an allotment order may be an administrative act, the consideration which must precede the doing of that act (in a case such as the present) in which the rights of one party depend upon the existence of a particular set of facts is of the nature of a quasi-judicial consideration."

The Court was there considering the nature of the inquiry which the Rent Control and Eviction Officer was required to make in a case which fell within the ambit of Rule 4, and it was unnecessary for the Court to express an opinion, nor did it do so, on the question whether an order under Section 7 is an administrative order or not.

32. The allotment order dated 14-6-1951 was made by the Rent Control and Eviction Officer in the exercise of his discretion; his order of 26-9-1953 cancelling that order was not so made, for it is clear from its terms that it was made in compliance with the direction which he had received from the District Magistrate embodied in an order of that officer dated the previous 18th September, it was in substance the order of the District Magistrate. The second question, therefore, resolves itself into this, whether the District Magistrate could cancel the allotment order made by the Rent Control and Eviction Officer.

That question is also, in my opinion, covered by authority, for in AIR 1952 All 819 (H), another Bench of this Court held that a District Magistrate had no power to rescind an administrative order passed by the Rent Control and Eviction Officer under Section 3 of the Act, on the ground that the statutory power to rescind an order conferred by Section 21, U. P. General Clauses Act can be exercised only in the same manner as the power to make the order, and that as the order was made by the Rent Control and Eviction Officer it could be rescinded only by that officer.

Learned counsel has invited our attention to AIR 1954 All 745 (I) and to AIR 1955 All 36 (G), but in my opinion neither of these cases is of assistance to the respondent. In the former of these cases a learned single Judge of this Court expressed the tentative view that if two officers exercise a concurrent jurisdiction, it may be possible for one to review the order of the other. That expression of opinion was however 'obiter' as the point was expressly stated by the learned Judge to be one which it was not necessary for him to decide.

In AIR 1955 All 36 (G) it was held by a Pull Bench that, in the particular circumstances of that case, the order passed by a Rent Control and Eviction Officer was cancelled by a subsequent order of the District Magistrate. But it is clear from the judgment that the District Magistrate had throughout

been acting through the Rent Control and Eviction Officer who. both when he made the order of allotment and when he cancelled it, was acting in accordance with the instructions of the District Magistrate, The case is therefore not only distinguishable on the facts, but the learned Chief Justice in delivering the judgment of the Court was careful to point out that the result might have been different had the Rent Control and Eviction Officer been acting independently.

33. In my opinion this petition must be allow ed and I agree with the order proposed by my brother.