Karam Chand Thapar & Bros. Ltd. vs Dr. Vijay Anand And Ors. on 2 April, 1952

Equivalent citations: AIR1952ALL699, AIR 1952 ALLAHABAD 699

JUDGMENT

Bind Basni Prasad, J.

1. This is an application under Article 226 of the Constitution for a writ of mandamus or alternatively for writs of certiorari and prohibition arising under the following circumstances:

2. The applicants are a firm of traders having their Head Office at Calcutta. They were the tenants of opposite party No. 1, the Maharajkumar of Vizianagram, in the premises bearing Municipal No. S17/328 situated at Station Road in Banaras Cantonment and in these premises they carried on the business of the sale of petrol. They had also an automobile servicing station in these premises. The tenancy started in 1938 when a lease for a term of five years was made in favour of the applicants by the Maharajkumar on a monthly rent of Rs. 40/-. There was an option of renewal in the deed of lease and such renewals, took place from time to time. The lease ended on the 31st May, 1951 and at that time the premises were held by the applicants on a monthly rent of Rs. 120/-. On the 21st April, 1951, the Maharajkumar served the applicants with a notice to quit. The applicants did not vacate the premises. The Maharajkumar then, applied to the District Magistrate of Banaras under Section 3 of the U. P. (Temporary) Control of Rent and Eviction Act, 1947, (hereinafter referred to as the Act) for permission to file a suit in the civil Court against the applicants for their eviction. The term "District Magistrate" is defined in Section 2 (d) of the Act. It includes an officer authorised by the District Magistrate to perform any of his functions under that Act. The applicants raised an objection before the District Magistrate to the grant of permission. Their contention was that the landlord wanted to "extort a fancy rent or fancy purchase money" from them. They alleged that the Maharajkumar was demanding Rs. 425/- per month as rent or alternatively a price of Rs. 75,000/- for the premises.

The matter came up before the Additional District Magistrate and by his order, dated the 4th July 1951, he accorded permission to the Maharajkumar to sue the applicants for ejectment in the competent Court. Having obtained this permission the Maharajkumar instituted Suit No. 345 of 1951 before the City Munsif of Banaras for the eviction of the applicants. That suit is still pending.

It is the permission granted by the Additional District Magistrate and the suit instituted by the Maharajkumar which have given rise to this petition. It is directed against the Maharajkumar of Vizianagram and the District Magistrate, the Additional District Magistrate and the City Munsif of Banaras. The reliefs claimed are that a writ in the nature of mandamus be issued to the Additional District Magistrate directing him to withdraw his order granting permission to the Maharajkumar to

file a suit for eviction, or alternatively that a writ in the nature of certiorari be issued, quashing the order, dated the 4th July 1951, passed by the Additional District Magistrate and a writ in the nature of prohibition be issued to the Munsif, Banaras prohibiting him from proceeding further with Suit No. 345 of 1951. Further it is prayed that a writ in the nature of certiorari be issued calling up the record of Suit No. 345 of 1951 and quashing the proceedings therein.

3. The grounds upon which the above reliefs are claimed fall broadly under two heads:

> Firstly, it is contended that the order, dated the 4th July 1951, passed by the Additional District Magistrate granting permission to the Maharajkumar to file the suit for eviction is bad in law for the following reasons:
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> (a) That the order is arbitrary and mala fide.
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> (b) That as the Additional District Magistrate did not act reasonably in granting permission to the Maharajkumar, there was, in the eye of law, no exercise of discretion.

Secondly, it is contended that Section 3 of the Act is ultra vires for the following reasons:

> (a) because an absolute and arbitrary discretion has been vested in the District Magistrate;
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> (b) because the provision as, to the permission by the District Magistrate is against the object of the Act;
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> (c) because the provision as to permission by the District Magistrate contravenes Article 14 of the Constitution which provides for equality before law; and
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> (d) because the provision as to the grant of permission by the District Magistrate delegates to him legislative power.

4. The application is opposed by the opposite party. It is contended on behalf of the Maharajkumar that in view of the abolition of zamindari that might be effected in the near future he decided to take to business and to run a petrol pump himself in the premises in question. It was denied that any attempt was made by him to enhance the rent or to sell the premises to the applicants. It was alleged that there was never any desire in the landlord to coerce the applicants or to intimidate them.

5. It is necessary first of all to set out certain relevant provisions of the U. P. Temporary Control of Rent and Eviction Act, 1947. Prior to this Act there were orders passed under Rule 81 of the Defence of India Rules to control letting and rent of residential and non-residential accommodation. When the Defence of India Act expired Ordinances were made for the same purpose. These Ordinances have been replaced by the Act. The preamble of the Act which shows its object is as follows:

> "Whereas due to the shortage of accommodation in Uttar Pradesh 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."

Section 3 of the Act provides:

> "3. Restrictions on eviction: No suit shall, without the permission of the District Magistrate, be filed in any civil Court against a tenant for his eviction from any accommodation, except on one or more of the following grounds,
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> (a) that the tenant has wilfully failed to make payment to the, landlord of any arrears of rent within one month of the service upon him of a notice of demand from the landlord;
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> (b) that the tenant has wilfully caused or permitted to be caused substantial damage to the accommodation;
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> (c) that the tenant has, without the permission of the landlord made or permitted to be made any such construction as, in the opinion of the Court, has materially altered the accommodation or is likely substantially to diminish its value;
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> (d) that the tenant has created a nuisance or has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation, or which is likely to affect adversely and substantially the landlord's interest therein;
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> (e) that the tenant has on or after the 1st day of October, 1946 sub-let the whole or any portion of the accommodation without the permission of the landlord;
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> (f) that the tenant has renounced his character as such or denied the title of the landlord and the latter has not waived his right or condoned the conduct of the tenant; Explanation: For the purposes of sub-section (e) lodging a person in a hotel or a lodging house shall not be deemed to be sub-letting."

In 1948 there was an amendment of this Act by the U. P. Act No. XLIV of 1948. Section 10 of the amending Act provides:

> "For the removal of the doubt it is hereby declared that under Section 3 of the principal Act no permission of the District Magistrate is or be deemed to ever have been necessary for filing of a suit for eviction against a tenant on any of the grounds mentioned in Clauses (a) to (f) of the section."

Reading the two sections quoted above it is clear that the intention of the law is that where a tenant is sought to be ejected on any of the grounds specified in Clauses (a) to (f) of Section 3 no

permission of the District Magistrate is necessary and the landlord can evict the tenant in accordance with the provisions of the Transfer of Property Act; but where a landlord proposes to evict a tenant not on any of the grounds specified in Clauses (a) to (f) of Section 3 of the Act then his rights of eviction under the Transfer of Property Act have been curtailed by providing that he must first obtain the permission of the District Magistrate to file a suit for ejectment. In this manner the law has controlled and regulated the eviction of tenants. A brake has been put in this manner by the Temporary Control of Rent and Eviction Act upon the rights which the landlords possessed under the Transfer of Property Act to evict their tenants.

6. The District Magistrate acts under Section 3 of the Act not as a Court, but in his administrative capacity. It is not necessary for him to give reasons in his order for granting or refusing permission. In the present case, however, the Additional District Magistrate has written an order covering two manuscript pages and learned counsel for the applicants has criticised that order to show its unreasonableness. It was argued that it was the duty of the Additional District Magistrate to have summoned the Maharajkumar for examining him on the point whether or not a rent of Rs. 425/- or purchase money of Rs. 75,000/- was being demanded by him. It is also contended that the Additional District Magistrate should have decided whether or not the lease expired on the 31st May, 1951 and should not have left it for the civil Court to decide.

A perusal of the order, dated the 4th July, 1951 passed by the Additional District Magistrate shows that he found that 'prima facie' the lease had expired on the 31st May 1951 and having regard to the fact that with the abolition of zamindari the landlord's income was likely to be diminished very much he should be given an opportunity to augment it by taking to petrol business. A decision by the Additional District Magistrate whether or not the applicants were entitled to continue in the premises under the terms of the lease after the 31st May, 1951 would have been of no value. It is the civil Court which has the jurisdiction to determine this point. It cannot be said that the view taken by the Additional District Magistrate was arbitrary or 'mala fide'. Under the Act suits for eviction of tenants have not been completely prohibited. In certain class of cases such ejectment suits can be filed without the permission of the District Magistrate while in others only with the permission of the District Magistrate. The District Magistrate has to exercise his discretion whether in the circumstances of any particular case such a permission should or should not be granted. He is the sole judge of this and the exercise of his discretion cannot be challenged in a Court of law.

It is true that officials of the State must exercise their discretion reasonably and without any corrupt motive. There is no suggestion of any corrupt motive in the present case, nor can it be said that there was no reasonable ground for the Additional District Magistrate to grant the permission to the landlord. The first ground of attack upon the order dated the 4th July, 1951 fails.

7. Coming to the second ground firstly it is contended that as an unfettered discretion has been given to the District Magistrate to grant or refuse permission to the landlord to file an ejectment suit, so the provision in Section 3 of the Act to that effect is bad. This is not the only Act, in which such a power has been given to a public officer or authority. There are numerous examples of the grant of such powers. Sections 91 and 92 of the Code of Civil Procedure contemplate the previous consent of the "Advocate General for the institution of certain classes of suits. The Land Acquisition

Act provides that Government is to satisfy itself whether or not the land is required for a "public purpose". Similar is the provision in the various Land Requisition Acts passed in the various States. Section 197 of the Code of Criminal Procedure and a large number of the penal Acts passed both by the Central and the State Legislatures, provide for the previous sanction of certain specified authorities before commencing a prosecution. No principles are laid down in these enactments for the exercise of the discretion in giving the consent, or making the declaration or according the sanction.

The impugned law is no innovation. It is in accord with the legislative practice in this country. In the ultimate analysis, discretion in such matters has to be given to specified public authorities. Instances are so numerous and circumstances are so varied that it is not possible to lay down any hard and fast rule as to in what cases the District Magistrate should grant and in what cases he is to refuse permission under Section 3 of the Act. There is no presumption that the District Magistrate will exercise the discretion arbitrarily. On the other hand the presumption is that he will exercise it reasonably. We see no force in the contention that the law is bad because of the unregulated discretion given to the District Magistrates in the grant of permission under Section 3 of the Act.

8. Then it is argued that as the object of the Act according to the preamble is "to prevent eviction of tenants" from accommodation, so much of Section 3 of the Act as empowers the District Magistrate to grant permission for the institution of ejectment suits is void and it should not be given effect to. We are unable to agree with this. Reading the Act as a whole, it is clear that the intention of the Legislature was not to put a complete ban on the eviction of the tenants, but only to regulate their eviction. Where eviction is sought on grounds specified in Clauses (a) to (f) of (Section 3 of ?) the Act, the landlord is free to sue the tenant for eviction as before. But if he intends to eject the tenant on any other ground, he must obtain the previous permission of the District Magistrate. Section 3 is incompatible with the theory that tenants cannot be evicted from accommodation. The preamble of an Act cannot nullify the express provisions of the enactment. The whole idea of the Act is to control and regulate evictions of tenants and not to stop it altogether.

9. Thirdly, it is argued that the provision as to permission by District Magistrates is likely to result in discrimination and is thus repugnant to Article 14 of the Constitution. If this contention is accepted, then it means that every provision in any law which gives an authority a discretion to grant permission, or sanction or declaration, would become invalid The case of 'Yick Wo v. Peter Hopkins', (1886) 118 U S 356: 30 Law Ed. 220, is relied upon. The facts of that case are distinguishable. There a certain regulation as to laundry business in the city of San Francisco was applied in a discriminatory manner against the Chinese, and in that context the Supreme Court observed that though a law be fair on its face and impartial in appearance, yet if it is administered by public authority with an evil eye and an unequal hand so as practically to make illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.

That is not the position here. In the present case, there was on the one hand a merchant from Calcutta carrying on business in Banaras and on the other hand a landlord whose sources of income are likely to shrink very much on account of the abolition of Zamindari. If in these circumstances,

the permission was granted to the landlord to sue the applicant for ejectment, it cannot be said that any discrimination has been made by the District Magistrate. In the exercise of his discretion, the District Magistrate has to grant permission in some cases and refuse in others. If the argument on behalf of the applicant is accepted, then it would mean that in every case the order of the District Magistrate can, be assailed either by the landlord or by the tenant on the ground of discrimination even though it may have been passed reasonably.

The scope of Article 14 of the Constitution has been discussed in the recent case of our Supreme Court in 'The State of West Bengal v. Anwar Ali Sarkar', AIR 1952 S C 75. That was a case in which the accused were placed in a less advantageous position under the impugned Act than under the Code of Criminal Procedure and it was at the discretion of the Government to decide as to in which case the trial was to be under the impugned Act. In these circumstances, certain provisions of that Act were held to be discriminatory and as such void. Mukerji, J., one of the Hon'ble Judges who delivered the majority judgment, observed at page 92:

> "The learned Judge pointed out in course of his judgment that there are cases where discretion is lodged by law in public officers or bodies to grant or withhold licences to keep taverns or places for sale of spirituous liquor and the like. But all these cases stood on a different footing altogether. The same view was reiterated in 'Crowley v. Christensen', (1890) 137 U S 86, which related to an ordinance regulating the issue of licences to sell liquors."

10. If the discretion to grant licenses can be without any regulating principles embodied in the statute, there is no reason why the discretion to grant permission to a landlord to sue Ms tenant for ejectment should be hedged in by statutory rigid rules. 'IN ANWAR ALI'S CASE', AIR 1952 S C 75, certain longstanding rights of the accused were curtailed by the impugned Act. The present Act far from restricting the rights of a tenant grants him to a certain extent security of tenure. Unless he falls in Clauses (a) to (f) of Section 3, he is no longer a tenant at will. The impugned provision on the face of it is not discriminatory. It applies to all in similar circumstances. We hold that it does not infringe Article 14 of the Constitution.

11. The fourth ground relating to the excessive delegation of legislative powers to the District Magistrate by allowing him unfettered discretion in the grant of the permission under Section 3 of the Act was not pressed before us.

12. For the reasons given above we see no force in the application and dismiss it with cost. We fix rupees three hundred and twenty only as costs for opposite parties Nos. 2 to 4 and the same to opposite party No. 1. The interim order staying Suit No. 345 of 1951 in the Court of the City Munsif, Banaras between opposite party No. (1) and the applicant is discharged.