

Ram Chander vs Mohan Lal Tewari And Ors. on 13 January, 1954

Equivalent citations: AIR1954ALL457, AIR 1954 ALLAHABAD 457

Author: V. Bhargava

Bench: V. Bhargava

ORDER

V. Bhargava, J.

1. By this writ petition under Article 226 of the Constitution the petitioner seeks issue of a writ of mandamus directing the Rent Control and Eviction Officer, Kanpur, opposite party No. 3, the District Magistrate, Kanpur, opposite party No. 4, and the State of Uttar Pradesh, opposite party No. 5, not to give effect to the allotment order dated 12-7-1950, passed by opposite party No. 3. Opposite party No. 1, Mohan Lal Tiwari is the person in whose favour the allotment order was passed and opposite party No. 2, Panna Lal is the person who, according to the petitioner, is occupying the accommodation allotted by this order and whom the petitioner wants to retain as occupant of that accommodation.

The petitioner claims to be the owner of the accommodation. The fact that the petitioner is the owner of the accommodation is not contested by the opposite parties. The only opposite party who filed a counter-affidavit is opposite party No. 1 Mohan Lal Tewari. No counter-affidavits have been filed by any of the other four opposite parties.

2. When this petition came up for hearing before me, learned counsel for the petitioner sought permission to argue first one point which was more or less a question of law and that related to the authority of opposite party No. 3 to pass the order challenged by this writ petition. The post of opposite party No. 3 at the time of the order of allotment was held by Shri P.S. Tandon who, it appears, was a probationary Deputy Collector.

According to the affidavit filed in support of the petition, no express order was passed by the District Magistrate of Kanpur authorising Shri P.S. Tandon to perform the functions of the District Magistrate under the U. P. (Temporary) Control of Rent and Eviction Act or under any of the provisions of that Act. The affidavit says that the District Magistrate only passed one single order which was to the following effect :

"A probationary Deputy Collector is being posted here. He will take up house and rent control work."

3. There are two aspects which are of importance. The first is that this order was passed at a time when Shri P.S. Tandon had not yet taken over charge in the district of Kanpur and was still being posted to that place. The latter portion of the order cannot, therefore, be deemed to be an order authorising him to perform the functions of a District Magistrate as no such order could be passed until he had already taken over charge in the district and had become subordinate to the District Magistrate so that the District Magistrate might have authority to delegate the powers to him.

The second aspect is that the language used in the order of the District Magistrate merely indicates that the District Magistrate was considering, at that time what would be the distribution of work among the officers and he said that Shri P.S. Tandon would take up house and rent control work. In recording this order, it does not appear that the District Magistrate intended by the order passed to confer authority on Shri P.S. Tandon to perform the functions of a District Magistrate under the U. P. (Temporary) Control of Rent and Eviction Act.

In the counter-affidavit Mohan Lal Tewari contented himself by stating that the assertion made by the petitioner in his affidavit that Shri P.S. Tandon was not a duly appointed officer under Section 2 (d), U. P. (Temporary) Control of Rent and Eviction Act was denied. In case there was any proper order actually conferring the authority on Shri P.S. Tandon, the opposite party in his affidavit could have re-produced it or at least made a reference to it.

It may be noticed that, in this case, the Rent Control and Eviction Officer of Kanpur was himself an opposite party and so was the District Magistrate of Kanpur. No counter-affidavits have been filed on their behalf and no attempt has been made to contest the correctness of the allegation made by the petitioner in para No. 23 of his affidavit that only one single order was passed by the District Magistrate which was to the effect mentioned above. Hence it must be held that no other order was passed conferring authority on Shri P.S. Tandon to perform the functions of the District Magistrate under the Act.

4. Learned counsel for the opposite party Mr. Brij Lal Gupta urged that the definition of a District Magistrate in the U. P. (Temporary) Control of Rent and Eviction Act did not require that the authority should be conferred in any particular form, and consequently the Court should not insist that the order should be in any particular form. It is correct that no particular form is prescribed but an order to be valid should be so worded as to indicate that that order had the effect and was intended to authorise the officer to perform the functions of the District Magistrate under the Act. Such an inference does not follow from the actual order which was passed by the District Magistrate. It must, therefore, be held that the allotment order was passed by an officer who had no authority to make the order of allotment and consequently it cannot be given effect to.

It appears from the further facts given in the affidavit of the petitioner that this order of 12-7-1950, was subsequently considered by the Housing Committee which made a recommendation that the order of allotment should be withdrawn and the accommodation should be allotted to Panna Lal opposite party No. 2. This recommendation of the Housing Committee was accepted by opposite party No. 3 who vacated his previous order of 12-7-1950.

Thereupon, opposite party No. 1 approached the State Government who set aside the order of cancellation and restored the order of opposite party No. 3 dated 12-7-1950. There is no suggestion that the State Government, while exercising its powers, passed any allotment order of its own. All that is stated is that the State Government restored the order of opposite party No. 3 dated 12-7-1950. That order being invalid and having been passed by a person having no authority to pass such an order, the restoration of that order by the State Government would not make it a valid order liable to be enforced. In these circumstances, this writ petition must succeed on this preliminary ground.

5. I, therefore, direct that a writ of mandamus shall issue to opposite parties Nos. 3 to 5 not to give effect to the order passed by opposite party No. 3 on 12-7-1950, directing the petitioner to let out the accommodation to opposite party No. 1. Since the petition has been decided on a technical point, I make no order as to costs.