

G. S. Barrow

Vs

District Magistrate and Others

Civil Appeal No. 1988 of 1989

(L. M. Sharma, S. Ranganathan, M. H. Kania JJ)

17.03.1989

JUDGMENT

KANIA, J. –

1. Special Leave granted. Counsel heard.

2. This is an appeal by special leave under Article 136 of the Constitution. As the appeal is against interlocutory order, we propose to dispose of the same by a short order.

3. The dispute relates to a bungalow situate at 553/135 Adarsh Nagar, P. S. Alambagh, Lucknow. The said bungalow belonged to one Shri S. Barrow, who was a bachelor and died in 1966. According to the appellant, the said bungalow has come to his share; respondent 3 has disputed this, but it is common ground that the appellant is, at least, one of the co-owners of the said bungalow. On September 9, 1977 respondent 3 filed an application before the Rent Control Officer, Lucknow, praying that the said bungalow (hereinafter referred to as "the said premises") was vacant and available for allotment and that the said premises should be allotted to him. In the said application, S. Barrow, who died in 1966 as stated aforesaid, was shown as the owner of the said premises. The notice of the said application addressed to S. Barrow, a dead person, was, according to respondent 3, served on E. B. Barrow. This is denied by the appellant. It is however, common ground that the said notice was addressed to a dead person and that E. B. Barrow clearly mentioned when notice was served to him that he had nothing to do with the said premises. On October 15, 1977 an order was made against the deceased S. Barrow allotting the said premises to respondent 3 and directing that the said premises should be handed over to respondent 3. According to the appellant, respondent 3 took forcible possession of the said premises on October 7, 1977. However, according to respondent 3, he was put in possession by E. B. Barrow. The appellant rushed to the Rent Control Officer and obtained a stay of further eviction, as a result of which he retained possession of two rooms and a store in the said premises. The appellant preferred a revision petition under Section 18(1) of the U.P. Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'the said Act') against the said order of allotment. The learned Additional District Judge, who heard the said revision petition, by his order dated January 17, 1981 allowed the same and set aside the order of allotment in favour of respondent 3. The learned Additional District Judge held that the allotment order was addressed to S. Barrow, who had died long ago and hence was of no legal effect. He further held that there appeared to be no truth in the case set out by respondent 3 that the possession of the said premises was delivered to him by E. B. Barrow. The learned Additional District Judge came to the conclusion that as the allotment order was addressed to a dead person no right could possibly accrue under it. He further observed that if an occasion arose for the allotment of the said premises, respondent 3 should be given the first preference as respondent 3 was in possession of the

said premises since October 1977. The operative part of the order stated that if the premises was available for allotment, they might be allotted to respondent 3 or to any other person found entitled. This order was not challenged in any further proceedings and become final. As he failed to get possession of the said premises, the appellant filed an application under Section 18(3) of the said Act to the District Magistrate for eviction of respondent 3 from the said premises and for delivery of the vacant possession thereof to the appellant. On April 20, 1982 the application of the appellant was allowed by the Additional District Magistrate. He pointed out that as the allotment order had been set aside, it was obligatory on the part of the District Magistrate, when an application had been made to him, to put back the appellant in possession. He directed respondent 3 to vacate the said premises within fifteen days failing which he should be evicted by force. No appeal or revision petition was preferred against this order. Curiously enough, on April 23, 1982 respondent 3 filed an application before the District Magistrate for the transfer of the allotment proceedings from Additional District Magistrate to some other competent court. On May 13, 1982, the proceedings were transferred to Additional District Magistrate (Finance and Revenue). Respondent 3 on May 14, 1982, filed an application to the Additional District Magistrate (Finance and Revenue) for recalling the order passed on April 20, 1982 or to stay its operation. The Additional District Magistrate (Finance and Revenue) stayed the eviction of respondent 3 pending the decision of the proceedings before him. The appellant applied unsuccessfully to the said Additional District Magistrate to get the stay order vacated. The appellant then filed a writ petition in the Allahabad High Court challenging the order passed by the Additional District Magistrate (Finance and Revenue). The said writ petition was disposed of by a learned Judge of the High Court. The learned Judge held that the possession of the said premises by respondent 3 was in pursuance of the order of allotment in his favour which had been set aside. The allotment order was directed against a person, namely, S. Barrow, who died long back and there could be no question of respondent 3 getting the possession at the instance of or with the consent of anyone else. The High Court rejected the contention of respondent 3 that he had been put in possession by E. P. Barrow, who, according to him, was a co-landlord and legal representative of the deceased, S. Barrow. The High Court accepted the contention of the appellant that the act of respondent 3 in getting possession of the said premises was not according to law and the very basis of his possession, namely, the order of allotment, having been set aside his continuance in possession was illegal and unauthorised. The learned Judge stated that he was clearly of the view that the writ petition deserved to be allowed subject to certain directions. The learned Judge further observed that no provision of the said Act was pointed out to him under which the Additional District Magistrate (Finance and Revenue) was empowered to pass the impugned order dated May 27, 1982, staying the eviction of respondent, and went on to conclude that the said order was passed in abuse of the powers or in exercise of the powers not vested in the said Additional District Magistrate. Curiously enough, after having held on all the points in favour of the appellant, the High Court observed that equitable considerations arose in favour of respondent 3 as he had been in continued possession of the said premises since October 7, 1977 and inter alia gave a direction that if respondent 3 paid to the appellant or deposited with the said Additional District Magistrate for payment to the appellant the arrears at the rate of Rs. 100 per month payable from October 7, 1977 to August 31, 1988 within a period of three weeks, he should not be evicted till the disposal of the allotment proceedings pending before the Additional District Magistrate. We totally fail to understand how any equitable consideration arose in this case when respondent 3 was held by the High Court to have been in illegal and unauthorised possession of the said premises from October 7, 1977. The payment of the said arrears could be no consolation whatever to the appellant who was entitled to the possession of the said premises and was deprived of it for a long period of 11 years. We may further point out that the question whether the premises are available for allotment on the ground of the vacancy, is itself debatable, as it is the intended to

be let. This question will have to be decided by the authority concerned before any order of allotment could be made. Under these circumstances, the appeal is allowed to the extent that the direction that respondent 3 should not be evicted from the said premises on the condition as set out earlier is vacated and it is directed that respondent 3 shall vacate and hand over to the appellant the possession of the said premises within a period of two weeks from today, failing which he shall be evicted forcibly with the help of police if necessary. The possession should be handed over to the appellant on his filing an undertaking in the Court of the Additional District Magistrate concerned, not to part with the possession of the said premises or any part thereof or to create any third party right therein till the allotment proceedings are decided by the said Additional District Magistrate.

4. There is one other matter which we would like to advert to before concluding the judgment. We find that the learned Additional District Magistrate by his order dated April 20, 1982 set aside the allotment order in favour of respondents 3 and observed that, as and when the question of allotment of the said premises arose, respondent 3 should be given the first preference. In our view, this cannot be regarded as more than a recommendation because the question of allotment has to be decided in the relevant proceedings by the authority concerned. We may also point out that it will be for the allotting authority concerned to consider not only this recommendation but also whether, in view of the conduct of respondent 3 who somehow or other managed to retain possession of the said premises even after allotment order was set aside, he deserves priority among the applicants for allotment, if and when the question of allotment comes up.

5. In the result, the appeal is allowed. The order of stay granted by the High Court staying the eviction of respondent 3 is vacated.

6. Respondent 3 shall pay the costs of this appeal to the appellant.

</html