

ALLAHABAD HIGH COURT

Narottam Saran

Vs.

State of U.P

Civil Misc. (Writ) Petn. No. 944 of 1953

(Raghubar Dayal and V. Bhargava, JJ.)

02.11.1953

JUDGMENT

Raghubar Dayal, J.

1. This is an application under Article 226 of the Constitution praying for the issue of a writ, order or direction in the nature of 'certiorari' calling for the record of the case and after perusal quashing the order of the State Government setting aside the order of the Commissioner and restoring that of the District Magistrate in the following circumstances.

2. The applicant purchased a certain house in 1950 and applied to the District Magistrate, Moradabad for permission to file a suit for ejectment against opposite party No. 2. This application was rejected by the District Magistrate. He filed a revision against the refusal to grant him permission to eject opposite party no. 2 before the Commissioner in view of Section 3, Sub-Section (2) of the U.P. (Temporary) Control of Rent and Eviction Act. The revision was allowed and the applicant was given permission under Section 3 of the Act to file a suit for ejectment of opposite party No. 2 at the end of six months from the date of the order, which was the 19th of February, 1953. Opposite party No. 2 then approached the State Government on the 2nd July, 1953. The Food Commissioner forwarded the application of opposite party No. 2 to the Commissioner saying that since there did not appear to be any irregularity in the orders of the District Magistrate his orders be allowed to stand and the permission given under Section 3 of the Act to the owner be withheld. The applicant knowing of this order submitted a representation to the Government pointing out the facts having a bearing on the case and praying for the recall of the 'ex parte' order. This representation was rejected by the Government in its letter, dated the 8th of September, 1953. It said that the Government had after fully considering the matter decided to restore the order of the District Magistrate and that this decision of the Government was not open to amendment. It is against the Government's ordering the restoration of the District Magistrate's order that this application is directed.

3. A writ in the nature of 'certiorari' can be issued to judicial or quasi-judicial bodies. We are of opinion that the District Magistrate or the Government do not act as any such body when dealing with the matter concerning the grant or refusal of permission to file a suit for ejecting a tenant.

The only reference to the District Magistrate's permission for filing a suit for ejectment against a tenant is to be found in the provisions of Section 3, Sub-Section (1) of the Act and they are that subject to any order passed under Sub-Section (3) 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. The Section nowhere lays down what considerations the District Magistrate should, bear in mind in dealing with an application praying for permission to file a suit for evicting a tenant. It does not lay down what procedure he should follow. He is not required to make any kind of enquiry and then to determine the matter in view of certain considerations. As an executive head of the district he is supposed to know the needs of the people and. it seems he has been authorized to give permission to landlords to sue for ejectment when he finds that that would not affect adversely the convenience of the people in general. In the circumstances, he cannot be said to be acting in a quasi-judicial capacity. One acts in that capacity when one has to ascertain facts or law with respect to a certain dispute between the parties and in dealing which he is expected to act judicially even though he does not constitute a judicial body. We have been referred to various cases, but we do not find anything in them which goes against what we have expressed and it is not necessary to refer to them.

4. Sub-Section (2) of Section 3 of the Act provides for a revision to the Commissioner and its Sub-Section (3) further provides that the Commissioner, if satisfied that the District Magistrate has acted illegally or with material irregularity or has wrongly refused to act, may confirm or set aside the order of the District Magistrate. It is urged that in view of the provisions of Sub-Section (3) the District Magistrate has to act according to law and in accordance with some procedure and that if he was not to act in that fashion no question for the consideration of the Commissioner arises. Absence of any considerations to guide the District Magistrate in the matter does not necessarily mean that the Commissioner cannot revise a certain order on any of the considerations mentioned in Sub-Section (3). The order of the District Magistrate may not refer to accommodation. The District Magistrate may not pass any order. These Sub-Section (2) and (3) were enacted subsequent to the enactment of the Act and it is quite possible that the legislature overlooked providing the facts which could guide the District Magistrate in dealing with such matters. Merely because the Commissioner is asked to act in a certain manner would not change the nature of the act which the District Magistrate is to perform when he is asked to give permission for filing a suit for ejecting a tenant.

5. Sub-Section (4) of Section 3 makes the order of the Commissioner in revision final subject to any order passed by the State Government under Section 7-F. Section 7-F is :

"The State Government may call for the record of any case granting or refusing to grant permission for the filing of suit for eviction referred to in Section 3 or requiring any accommodation to be let or not to be let to any person under Section 7 and may make such order as appears to it necessary for the ends of justice."

It is clear that the State Government is given absolute discretion to pass any order it considers necessary for the ends of justice on perusal of the order. The State Government is not required to give notice to the parties or to afford them opportunities to lay their case before it or to argue their case before it. In passing such a discretionary order the State Government cannot be said to act in a quasi-judicial capacity.

6. We are, therefore, of opinion that no writ of 'certiorari' can be issued to the Government in connection with its orders under Section 7-F of the Act and that therefore this application is not maintainable. We accordingly reject it.

Application rejected.