(1978) 12 AHC CK 0037

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 524 of 1976

Sana Ullah	APPELLANT
Vs	
Ashok Kapil and others	RESPONDENT

Date of Decision: Dec. 4, 1978

Acts Referred:

- Constitution of India, 1950 - Article 226
- General Clauses Act, 1897 - Section 19A
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 3(1)

Hon'ble Judges: K.C.Agrawal, J

Final Decision: Allowed

Judgement

K. C. Agarwal, J.

Ibad Ullah Khan, father of the petitioner, was lessee of a piece of land measuring 160 square yards, situate in Takia Shahgarh, Budhana Gate, Meerut City. On the said land, the petitioner''s father made certain constructions. It bore Municipal Number 752 (New) corresponding to 672 (Old). Ibad Ullah Khan had been letting out the aforesaid premises to tenants. Ultimately, by means of a lease deed dated 7.3.1969, the land measuring 160 square yards along with the constructions standing thereon was let out to one Deep Chand Gupta for a period of five years. On 25.6,1969, Ibad Ullah Khan died, leaving behind the petitioner as his sole heir. On 3.8.1974, Deep Chand Gupta, in compliance of the terms of the lease, vacated the premises and handed over its possession to the petitioner.

On 20.8.1974, an application was moved by Ashok Kapil, Editor and Proprietor of ''Kapii Times'', Meerut, for allotment of the aforesaid premises. On 3.9.1974, the petitioner filed an objection before the Rent Control and Eviction Officer asserting that the constructions standing on the land were not ''building'', liable to be allotted, and that the petitioner was interested to use the said Ahata for his own purposes. On 26.10.1974, a report was

submitted by the Rent Control Inspector. Subsequent to the aforesaid report, the petitioner requested the Rent Control and Eviction Officer for dropping the proceedings for allotment on the same ground on which he had already moved an application on 3.9.1974. The ground was that the Ahata existing on the land was not a ''building'' within the meaning of that term, defined in Section 3 of U. P. Act XIII of 1972, and, as such, no allotment order could be passed in respect of it.

On 3.9.1975, the Rent Control Inspector again submitted a report to the District Magistrate, Meerut, and observed therein that the petitioner had removed the roofs from the constructions, and that as Ashok Kapil was the fittest Candidate for allotment, an order to that effect be made in his favour. On the said report, no endorsement was made by the Rent Control and Eviction Officer on 14.9.1975, accepting the recommendation of the Rent Control Inspector and directing for the allotment of the premises to respondent 4. Being aggrieved, the petitioner filed an appeal before the District Judge. On 29.9.1975, the appellate authority remanded the case to the Rent Control and Eviction Officer for a fresh enquiry into the matter. On 8.L0.1975, the Rent Control and Eviction Officer again made an order holding that the premises in question was allotable and, as such, the allotment order made in favour of respondent 4 was not illegal. Before making that order, fresh reports had also been obtained from the Rent Control Inspector.

The appeal was reheard by the appellate authority, and since the appellate authority was of the view that certain findings were not recorded by the Rent Control and Eviction Officer, he again sent back the case to him for a fresh decision. In compliance with the aforesaid order, the Rent Control and Eviction Officer again heard the parties and passed an order on 7.11.1975. In this order, the Rent Control and Eviction Officer found that the compound was a covered accommodation and was constructed after the year 1951, the proceedings for allotment could be taken in respect thereof. The District Judge heard the appeal again. Thereafter, on 2.1.1976, the appeal was dismissed.

Aggrieved, the petitioner filed the present writ petition.

The first controversy that arose for decision in the present case was whether the constructions standing on the land were ''building'', and that an allotment order could be made in respect thereof. In this connection, the case of the landlord was that he had given the vacant land to Deep Chand Gupta, and that he had made certain constructions of his own on the spot, but while vacating the premises Deep Chand Gupta had demolished those constructions. The case of respondent 4, however, was that the constructions belonged to the landlord, and that he had illegally and unjustifiably removed the roofs of the walls after the same had been vacated by Deep Chand Gupta. According to respondent 4, Deep Chand Gupta only constructed certain sheds in addition to the existing building in pursuance of the terms of the agreement executed between the petitioner and Deep Chand Gupta for his icecream factory. Deep Chand Gupta was not the owner of the roofs, and that the petitioner had removed them with an ulterior motive to evade the provisions of the Act.

On the aforesaid controversy, the Appellate Authority framed the following three points :

"1. Whether the rooms were constructed by Deep Chand, previous tenant or by the landlord himself ? If so, its effect ?

2. Whether the roofs of the building were demolished by the appellant after it had fallen vacant or by the premises tenant Sri Deep Chand before his vacation ? If so, its effect ?

3. In my case, whether the Rent Control and Eviction Officer had jurisdiction to allot the premises in dispute when there was no roof on either of the rooms at the time of allotment ?"

While answering the first two questions in favour of respondent 4, the Appellate Authority found that the disputed property had been constructed much before 1961, and that the walls, doors and windows or the roofs were the property of the landlord, and not the property of the previous tenant. It was further held that the accommodation in dispute had roofed structure at the time of vacation by the previous tenant, but at the subsequent stage the roofs had been removed and they were not in existence at the time of allotment of the disputed accommodation. The answer of the third question was in the affirmative, which means that according to the view of the appellate authority, although there were no roofs, the Rent Control and Eviction Officer had authority and power to make the allotment order.

Sri S. P. Gupta, counsel appearing for the petitioner, contended that the findings recorded on the first two questions, mentioned above, were erroneous. He urged that the constructions, which had been removed, belonged to Deep Chand Gupta, the previous tenant, and, as such, the provisions of U. P. Act XIII. of 1972 did not apply. According to his submission, the Act applies to property of a landlord and not to temporary constructions made by a tenant for his convenience and facility. He also contended that the finding of the appellate authority that the roofs had been removed by the landlord was erroneous and against the interpretation of the leasedeed entered into between Ibad Ullah Khan and Deep Chand Gupta, as well as the circumstances and evidence on record.

After hearing counsel for the parties, I am unable to accept the submission of the petitioner''s learned counsel. Both of these questions were of facts and the appellate authority interpreted the evidence brought on record by the parties, and held that the constructions belonged to the landlord, and that he had removed the roofs thereof. That being so, the finding is binding on me. This Court has no jurisdiction to interfere with the aforesaid finding. It is the settled law that the jurisdiction of this Court under Article 226 is confined to seeing the error of law and that of jurisdiction. In Bohatmal Ralchand Oswal v. Laxmibal P. Turte A. I. R. 1975 S. C. 1297, the Supreme Court observed :

"It would, therefore, be seen that the High Court cannot, while exercising jurisdiction under Article 227. interfere with findings of fact recorded by the subordinate tribunal. Its

function is limited to seeing that the subordinate court or tribunal functions within the limit of its authority.

In Ganpat v. Sashlkant A. I. R. 1978 S. C. 955, the above decision was followed by the Supreme Court and it was observed that a finding of fact could only be interfered with if either the same was perverse or patently unreasonable. None of the two grounds exist in the present case. The findings given are based on the inferences drawn from the evidence and circumstances. In fact, the learned counsel for the petitioner wanted me to reappraise the evidence and the circumstances and to record a finding of my own on the aforesaid questions. This is, however, not possible to be done.

The third question now that remains to be examined is whether the Rent Control and Eviction Officer had jurisdiction to allot the premises in dispute when it was not a "building" at the time of allotment.

For appreciating the aforesaid controversy, it may be relevant to point out that the Act had been passed by the U. P. Legislature "for the regulation of letting and rent of, and the eviction of tenants from certain classes of buildings situated in urban areas,..." Section 11 of the Act prohibits letting of any building except in pursuance of an allotment order issued under Section 16. Section 12 deals with deemed vacancy of building. Section 13 puts restrictions on occupation of buildings without allotment or release. Section 15 imposes an obligation on persons mentioned therein to intimate vacancy of a building to the District Magistrate. Section 16 deals with allotment and release of vacant buildings. A review of provisions, other than those, mentioned above would also show that the provisions have been made therein for or in respect of a building. It is not necessary that reference be made to all those provisions at this place.

A review of the provisions quoted above would show that the rights of a landlord have been regulated only with respect to a "building", and that, it is only a building that can be allotted in favour of a person. After an allotment order has been made that the allottee shall be deemed to become a tenant of the building from the date of allotment order.

The expression "building" has been denned in Section 3(1) as follows :

" "Building", means residential or nonresidential roofed structure and includes,

(1) Any land (including any garden), garages and outhouses, appurtenant to such building ;

(ii) Any furniture supplied by the landlord for use in such building ; (iii) any fittings and fixtures affixed to such building for the more beneficial enjoyment thereof.""

Since the definition above uses the word "means", it is clear that the definition is exhaustive, and that it is not possible to read in it something which is not stated therein. The definition clearly shows that in order to fall within it, there must be a roofed structure.

If, therefore, there is no roofed structure, the premises cannot be a building. Apart from the meaning given in the Act, what is a "building" must always be a block of brick or stone work, covered in by a roof. The roof need not be laid with lintal or other similar constructions. The ordinary and natural meaning of the word "buildingincludes the fabric and the ground on which it stands. It is a structure roofed in and capable of upholding protection and shelter. Therefore, similar roofless Ahata which merely surrounds a piece of land, though stayed and tied together, is not a building within the definition given above. The next question that arises for decision in this case is whether a construction should be a building on the date of allotment as well or that if it is found to be a building on the date when it is vacated, that alone should be sufficient for passing an allotment order.

The word "building", for the purposes of this Act, has been defined in Section 3(i). It would be seen that the power of allotment is conferred on an authority in respect of a building. If, therefore, there is no building, no allotment order can be passed in respect thereof. Hence, even if it may be correct that a certain construction was a building on the date when it was vacated, but if it is pulled down thereafter and brought down to the ground the power of allotment in respect of such a building cannot be exercised. Section 16 empowers a Rent Control and Eviction Officer to make an order of allotment in respect of a "building". As already stated above, the word "building", has to be given the meaning assigned to it in Section 3(i)of the Act. It is not possible to interpret this word differently for the purposes of different sections. The Act does not make any such distinction. An order of allotment under Section 16, thus, can be made only in respect of a building and not with respect to a construction which was a building at the time when it was vacated but subsequently ceased to be so.

In Amichand v, Ram Sharon Das 1965 A. W. R. 4, a learned Single Judge was called upon to decide whether an application could be made under Section 7C of U.P. Act III of 1947 in respect of a construction which was not an accommodation, although it was an accommodation at the time when it had been let out. The learned Single Judge held that deposit of rent under the aforesaid section since could be made only in respect of an accommodation, it was necessary that the accommodation existed as such on the date of filing of the application.

It was suggested that as the literal meaning of the word "building" is something which is built or constructed, therefore, even an Ahata should amount to a building. This is, however, not possible to be accepted in the present case. The word "building" has since been defined in the Act, there can be no justification for giving a literal meaning to the said word. Moreover, in the context in which the word "building" has been used in the present Act, it cannot cover a thing which is merely built and constructed and may only be in the shape of Chabutras or Ottas.

In fact, Sri S. S. Bhatnagar, learned counsel for respondent 4, also could not dispute that an Ahata was not "building" within the meaning of the term used in Section 3(1) of the

Act. He, however, contended that as the building had been pulled down by the petitioner after the same had been vacated by the previous tenant, the Rent Control and Eviction Officer could not be deprived of his power of allotment. According to his submission, the petitioner could not be permitted to take advantage of his own mischief and making the provisions of a beneficient act nugatory by his high handed action. 1 would have readily accepted the submission of the learned counsel for respondent 4, had I found nothing in the Act justifying this conclusion. To me, it appears that even a most liberal interpretation of the various provisions of the Act does not justify the conclusion at which the learned counsel for respondent 4 wanted me to reach at.

Generally accepted limitation of interpretation is that purpose of an Act cannot extend the meaning of a Statute beyond what the language of the Statute is capable of bearing. Sri S. S. Bhatnagar contended that while interpreting a beneficient legislation, a Court should put a construction which should not defeat the object of the legislation. He urged that since the construction was a building at the time when it fell vacant, that should be treated as sufficiently clothing the authority on the Rent Control and Eviction Officer to pass an allotment order. In this regard, he also relied on some of the decisions of the Supreme Court, one of which was Collector of Customs, Baroda v. D. S. & W. Mills Limited A. I. R. 1961 S. C. 1549. The proposition of law is indisputable. But, at the same time it is equally established that "if the words of a Statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the Legislature". In this case, as the words are clear and specific, it is not possible to put an interpretation on the words used in Section 16 of the Act, which the learned counsel for respondent 4 wanted me to do. That, to my mind, would be legislating and that a Court under the garb of interpretation cannot legislate. In his book on "Statutory Interpretation", (1976 Edition) Cross has stated the aforesaid position in his unimitable language :

"The question whether a particular interpretation gives the word a meaning that they will bear in crucial because to do that is not interpretation, but there is a noman"s land between interpretation and making statutory provisions not made by legislation where words are "read in" to a section of a Statute."

Accordingly, as the words are clear, I do not think that it would be possible for me to hold that even if a certain premises is not a "building" at the time of allotment, an order in respect thereof can be made by an authority.

The last submission made by the learned counsel for the respondent 4 was that as Section 19A of the General Clauses Act, as amended by the U. P. in 1976, confers ancillary power on an authority, and the power of allotment being ancillary to the regulation of letting, this Court should hold that the power exists even in respect of a building which has been pulled down and is not found as such on the date of allotment. This submission also is not tenable. It is a settled rule of interpretation of Statute that when power is given under a Statute to do a certain thing in a certain way, the thing must

be done in that way or not at all. See State of Gujarat v. Shanti Lal A. I. R. 1969 S. C. 634 and Taylor v. Taylor 1975 (1) Ch. D. 426. As the Legislature has conferred the power of allotment on a Rent Control and Eviction Officer only in respect of a building, it will not be possible to extend the said power to an item of property which is not a building. A power is said to be ancillary when it is subordinate to or in aid of another primary power. The primary power, in the present case, is that of allotment. This power is restricted to a building, and as this power cannot be used or exercised in respect of a premises other than a building, the same cannot be resorted to on the above basis.

In Bhola Nath v. State, 1957 A. L. J. 140 the question arose with respect to the power of allotment of as accommodation which had been destroyed. This court held that if the accommodation itself was destroyed before the letting, it could not be said to contravene the provisions of Section 7 of the Old Act. This position obtained at the time when the New Act came into force. As the Legislature can be presumed to have knowledge of the old position, it was necessary for it to have made a provision to the effect which could overcome this difficulty. Since no provisions had been made, it was clear that the Legislature did not intend to bring about any change in that situation. Accordingly, as the Legislature has framed the Statute in the same terms, it is not possible to take a different view. It was held by the Privy Council in Webb v. Outrim 1907 A. C. 81 that when a particular form of legislative enactment has received authoritative interpretation and the same is adopted in the framing of a latter statute, it is a sound rule of construction to hold that the words so adopted were intended by the legislature to bear the meaning which has been so put upon them.

For all these reasons, I find that as the Legislature did not confer the power of allotment in respect of a construction which ceased to be a building at the time of allotment, the order of allotment made in favour of respondent 4 was liable to be set aside. The general rule is that the ambit of power of a public authority can neither be enlarged nor abridged by an authority by its own conduct. It can exercise that authority alone which has been conferred on it. As the Legislature has not provided for meeting a situation like the present reluctantly I have no alternative but to hold that the allotment order made in favour of respondent 4 is invalid. It, however, appears appropriate to mention that the Legislature should intervene and make a provision to meet a contingency like the present.

The writ petition is, accordingly, allowed. The judgment of the appellate authority as well as the allotment order passed by the Rent Control and Eviction Officer are quashed. The petitioner will be entitled to get possession of the premises from respondent 4, which the latter will hand over to the petitioner within three months from today. There shall be no order as to costs.