

(1995) 08 AHC CK 0160

Allahabad High Court

Case No: C.M.W.P. No. 625 of 1980

Shail Bala and Others

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision: Aug. 31, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Storage Requisition Act, 1955 - Section 3

Citation: (1996) AWC 210 Supp

Hon'ble Judges: N.B. Asthana, J; D.S. Sinha, J

Bench: Division Bench

Advocate: Upendra Singh and Ravi Kant, for the Appellant; S.C. and R.C. Yadav, for the Respondent

Final Decision: Allowed

Judgement

D.S. Sinha, J.

Heard Sri Upendra Singh, holding brief of Sri Ravi Kant, learned Counsel appearing for the Petitioners and Sri R. C. Yadav, learned standing counsel representing the Respondents.

2. Exercising powers conferred upon him u/s 3 of the Uttar Pradesh Storage Requisition Act, 1955 (U.P. Act No. XXI of 1955) (hereinafter called the "Act"), the District Magistrate, Saharanpur, the Respondent No. 1, passed an order dated 26th October, 1979, a copy whereof is Annexure "4" to the petition, whereby he requisitioned the godown belonging to the Petitioners for the professed object of storing foodgrains and other foodstuffs by the Regional Food Controller. Meerut and Senior Marketing Inspector, (Deoband), Saharanpur, the Respondent Nos. 2 and 3 respectively, who were already occupying the building as tenant. This order is under challenge in this petition under Article 226 of the Constitution of India.

3. Undisputed facts, as they emerge from the pleadings of the parties before this Court, are these:

The disputed godown was let out to the Respondent Nos. 2 and 3 under a written agreement, a copy whereof is Annexure C.A.-I to the counter-affidavit, sworn by Sri R. S. S. Yadav and filed on behalf of the Respondents, on an agreed monthly rent of Rs. 2,464. Later on, it appears that the Petitioners were not satisfied with the quantum of rent of the godown as they felt that in view of the changed circumstances, it had become inadequate. Therefore, they started pressing the Respondent Nos. 2 and 3 for increase in the monthly rent. The Respondent Nos. 2 and 3 also felt that the demand of the Petitioners for increase of rent of the godown was reasonable and justified. The Respondent No. 2, therefore, wrote a letter dated 5th October, 1978 to the Chief Accounts Officer, U.P., Lucknow recommending enhancement of the rent. A true copy of this letter is Annexure "1" to the petition. The Chief Accounts Officer, U.P., Lucknow referred the matter to the Government, Food and Civil Supply Department. But the Government turned down the suggestion for enhancement of the rent, as is evident from the letter dated 25th May, 1979 from the Joint Secretary to the Chief Accounts Officer, Uttar Pradesh, Lucknow, a copy whereof is Annexure "3" to the petition.

4. While turning down the suggestion regarding enhancement of the rent of the godown, the Joint Secretary urged the Chief Accounts Officer, Uttar Pradesh, Lucknow to request the concerned District Magistrate to initiate necessary proceedings under the Act for requisition of the godown which culminated in the impugned requisition order passed by the Respondent No. 1.

5. It is not disputed that on the part of the Respondent Nos. 2 and 3, it was realised and admitted that the rent of the disputed premises was inadequate and the demand of enhancement of the rent raised by the Petitioners was reasonable and justified; and that the recommendation for enhancement of the rent was made through communication dated 5th October, 1978.

6. It is also not in dispute that the impugned order of requisition was passed on the direction of the Joint Secretary of the State of Uttar Pradesh given while turning down the demand of the Petitioners for enhancement of the rent which was held to be reasonable and justified by the Respondent Nos. 2 and 3; and that there is no material before this Court that the Respondent No. 1 had applied his mind independently before passing the order of requisition. It is apparent that the impugned order of requisition was passed to circumvent and get over the demand of the Petitioner for the increase of the rent which, admittedly, was certified by the Respondent No. 2 to be reasonable and justified. This leaves no room for any doubt that the power exercised by the Respondent No. 1 in passing the impugned order lacked bona fides.

7. It cannot be gainsaid that exercise of power by a statutory authority for the purpose other than the one for which the power is conferred by the statute amounts to mala fide exercise of power, and any order passed mala fide cannot be sustained. It must perish.

8. For what has been said above, the petition succeeds and is allowed. The impugned order dated 26th October, 1979 (Annexure-4 to the petition) is quashed. There will be no order as to costs.