
(1967) 03 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3028 of 1966

A.K. Mandhyan

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 15-03-1967

Acts Referred:

Citation : (1967) 37 AWR 441

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : B.D. Madhyan and S.N. Kackar, for the Appellant; Triloki Nath, V.K. Tewari, Gopi Nath, Tripurari Nath and S.C., for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—This is a petition under Article 226 of the Constitution for quashing the orders dated 5-1-1966 14-2-1966 and 23-5-1966 passed by the Respondents under the U.P. Control of Rent and Eviction Act.

2. The dispute relates to bungalow No. 78/142, Lukerganj, Allahabad. Stat. Ira Mittra, Respondent No. 4, is the landlady of this bungalow. One S.M. Dutta was occupying this bungalow on payment of a monthly rent of Rs. 120/-. He vacated it on 11-12-1964. He informed the landlady as well as the Rent Control and Eviction Officer of the vacancy. On 19-12-1964 the Petitioner applied for the allotment of this Lungalow. After enquiries the Rent Control and Eviction Officer allotted this bungalow to the Petitioner on 6-1-1965. Respondent No. 4 did not deliver possession to the Petitioner. The Petitioner thereupon filed an application u/s 7-A(i) of Rent Control and Eviction Act. The officer issued notice to the landlady. The fourth Respondent made an application to the Rent Control and Eviction Officer on or about 15th January, 1965 stating that after the house had been vacated by Sri S.M. Dutta, she herself has occupied it and hence it was not available for allotment. She stated that the house had been given to Sri S.M. Dutta on the understanding that he would vacate it whenever it is required by the landlady. No order seems to have been passed on this application and the

Rent Control and Eviction Officer issued a notice under Clause (ii) of Section 7-A on 5-2-1965 requiring the landlady to file objections, if any, upto 11-2-1965. No objections were filed. The Rent Control and Eviction Officer by way of precaution directed the Rent Control Inspector to contact the landlady. The Inspector reported that the landlady had gone to Calcutta and that the house in dispute was in occupation of one S.K. Afukerji for about a month without any allotment order. The Rent Control and Eviction Officer issued a notice under Clause (iii) of Section 7-A on 18-2-1965. Against this issue of the notice, the landlady went up in revision which was allowed on 19-4-1965. It was held that the notice under Clause (i) of Section 7-A was not properly served upon the landlady. The case was, therefore, remanded back to the Rent Control and Eviction Officer. On remand a fresh notice u/s 7-A(1) was issued. On or about 20th May, 1965 the landlady filed an application for the release of the accommodation in her favour. The Petitioner filed objections. The Rent Control and Eviction Officer directed the Inspector, to make a spot enquiry and report. In his report the Inspector stated that the landlady had been married and her husband was posted in Lucknow and that her need does not appear to be genuine. The Rent Control and Eviction Officer on 19-6-1965 rejected the application for release. He held that the landlady had not been in possession of any portion of the house while it was in the tenancy of Sri S.M. Dutta and hence Rule 7 was not attracted. He also found that the landlady has been married and will have to remain with her husband outside Allahabad. Her father used to live with her brother in Muththiganj house and he would find it more convenient to remain there, rather than to remain in the house all alone specially when he was an old and sick person. He held that the house had been let out to Sri S.M. Dutta on rent and under these circumstances the need of the landlady was not genuine. He further found that there was no misrepresentation, fraud or concealment of facts in procuring the allotment order. He, therefore, dismissed the release application as also the objections filed by the landlady to the allotment order.

3. Dissatisfied the landlady went up in revision. By an order dated 5-1-1966, the revision was allowed and the matter was again remanded to the Rent Control and Eviction Officer. The learned Additional Commissioner held that one of the grounds urged by the landlady in support of her application for release was that she was a student and needed the house in order to study at Allahabad and carry on her studies and the Rent Control and Eviction Officer had not considered this ground. He also held that the Rent Control and Eviction Officer was bound to record a finding on this ground. He consequently set aside the Rent Control and Eviction Officer's order and remanded the case for determining this ground for the release of the house. This time the Petitioner felt aggrieved and filed a revision before the State Government u/s 7-F. On 14-2-1966 the State Government passed an order that it was unable to interfere in the matter.

4. On the case coming back, the Rent Control and Eviction Officer permitted the landlady to file additional evidence and found that she was a regular student of the Ewing Christian College and that her need was genuine and bona fide. He

accordingly cancelled the allotment order dated 6-1-1965 passed in the Petitioner's favour and released the accommodation in favour of the landlady. This order has been passed on 23-5-1966.

5. It may be remembered that in the first order passed by the Rent Control and Eviction Officer on 19-6-1965, he had held that inspite of sufficient opportunity the landlady had failed to establish any fraud, misrepresentation or concealment of facts. This finding has not been upset by any higher authority, either the Additional Commissioner or the State Government. He had also held that the landlady's case that the house had not been let out to Sri S.M. Dutta was incorrect and that Rule 7 of the Act was not applicable. This finding was confirmed by the learned Commissioner in his order of remand dated 5-1-1966 in which he had specifically held that no fresh finding will be recorded or it after remand. These two findings, therefore, can be treated as final between the parties.

6. The vital question to be determined is the nature and the scope of the enquiry contemplated by Section 7-A of the Act. Can the authorities entertain an application for release by the landlord, or consider it on the merits and on finding that the landlord's need was genuine, cancel the order of allotment? u/s 7-A of the Act a person who is in occupation of an accommodation in contravention of an order of allotment can be asked to show cause why he should not be evicted therefrom. Such person can satisfy the District Magistrate that the allotment order was not "duly passed" and that he was entitled to remain in occupation of the accommodation. If he fails to so satisfy the District Magistrate, he is liable to be evicted.

7. The word "duly" means "in due manner"; according to law; legally on proper authority (Iyer's Law Lexicon p. 368). In Stroud's Judicial Dictionary (Vol. I, P. 581) it is on the authority of *Nightingale v. Wilecoxson* 18 B and C 202 and *Dudlow v. Waterhorn* 16 East 42 stated that "duly" does signify that the action has been done legally, in due course and according to the provisions of the law. The enquiry postulated by Section 7-A is confined to the question whether the order of allotment was duly passed, that is to say, whether the authorised officer made the order after complying with the requirements of law. The officer conducting the proceedings can only see whether the order of allotment is in the eye of law valid and enforceable. These being the limits of his jurisdiction, he will be transgressing them, if he tries to look behind the order and satisfy himself that the order of allotment was on the facts rightly passed. He has no power to find whether he would have passed the order. He cannot re-open the proceedings culminating in the allotment order. He is not constituted an appellate authority on facts. He has no jurisdiction to consider the propriety of the allotment order.

In *Abdul Hamid v. Additional Commissioner* 1958 AWR 253 a learned single Judge of this Court held:

Sections 7 and 7-A are closely connected. There is authority for the view that, in

dealing with revisions u/s 7-A, the Commissioner is entitled to consider the propriety or validity of the allotment order passed u/s 7 of the Act. If the Commissioner finds that the allotment order u/s 7 of the Act is improper or illegal, there is no good reason why the Commissioner cannot go to the length of setting aside the allotment order itself.

The only reported case on this point till then was of Mahabir Prasad v. District Magistrate, Kanpur 1955 AWR 384. In this case a Division Bench observed that a person has a right u/s 7-A(2) to show that the order of allotment has not been duly passed. In other words he can question the allotment order. This case did not hold that the propriety of the order can be looked into. Another Division Bench of this Court took a different view in R.K. Khandelwal v. M.L. Chawla 1964 AWR 36. It observed:

In a proceeding u/s 7-A the allotment order passed in his favour cannot be attacked and cannot be set aside. The District Magistrate has only to decide whether the person in occupation should be called upon to vacate and whether he should be evicted or not he is not called upon to decide whether the allotment order was valid or correct or not and he has no jurisdiction to cancel it. Even if he finds that an allotment order was invalid it is enough for him to refrain from passing an order under Sub-section (2) calling upon the person in occupation to vacate within a certain time and from using force to evict him in the event of his failing to comply with his order; he has not to go further and cancel the allotment order.

According to this case, the authorities can be refrained from taking any action on the finding that the order of allotment is not valid, but the order of allotment cannot be cancelled. This does not seem to countenance the position that in proceedings u/s 7A, the propriety of the allotment order can be considered.

In Mahabir Prasad v. District Magistrate Kanpur (supra) it was held that an order of allotment can be cancelled on grounds of fraud or misrepresentation committed by the allottee. This dicta was treated as illustrative by another Division Bench in Suraj Narain v. The District Magistrate, Kanpur 1958 AWR 432. The Bench observed at page 437 col. 2:

The terms "fraud" and "misrepresentation of facts" were used there only in an illustrative way.

They observed that mistake, collusion and inadvertence appear to stand on the same footing as fraud or misrepresentation of facts and can be equally good ground justifying the cancellation of the order. These grounds render the order illegal. On such grounds, therefore, the order of allotment can be held to have not been "duly passed". Hence u/s 7-A the officer can see whether any of these grounds have been established. If he so finds, he can refrain from taking action u/s 7-A.

8. In the instant case the finding was that there was no fraud, misrepresentation

or concealment of facts in obtaining the order of allotment. The mere fact that the landlady had subsequently applied for release or succeeded in establishing that she had a good case for release does not, in my opinion, make the order of allotment invalid. On this ground it cannot be said that the order of allotment was not "duly passed." The authorities had no power to cancel it or release the accommodation to the landlady. They had to proceed and put the allottee in possession.

9. For the Respondent it was urged that the order dated 5-1-1966 and 14-2-1966 should not be quashed because the petition is belated in respect of them. The present petition was filed on 22-8-1966. The ultimate order was passed by the Rent Control and Eviction Officer on 23-5-1966. The Petitioner cannot be held guilty of laches if he appeared before the Rent Control and Eviction Officer and contested the case in pursuance of the order of remand, before coming to this Court.

10. It was also urged that no manifest injustice has been done between the parties and this is not a fit case for interference. The allotment order duly passed in favour of the Petitioner has been set aside. It cannot, therefore, be said that the impugned order does substantial justice between the parties. The landlady is a married woman. She was living along with her father, with her uncle in his Muththiganj house. The house in dispute had been given by her on rent to a tenant illegally. Her case that she had not let out the house has been found to be false. Her case that she was in possession of a portion of the house so as to attract Rule 7 has also been found to be incorrect. This, in my opinion, is not a case which may be thrown out on the ground that the impugned orders did substantial justice between the parties. In this view of the matter it is not necessary to deal with the point that the finding recorded by the Rent Control and Eviction Officer as to the need of the landlady, was perverse.

11. In the result, the petition succeeds and is allowed. The impugned orders dated 5-1-1966, 14-2-1966 and 23-5-1966 are quashed. The Petitioner will be entitled to his costs.