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**(1976) 05 AHC CK 0009**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 6214 of 1974**

Amar Nath Mehrotra

APPELLANT

Vs

The District Judge Judge and Others

RESPONDENT

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**Date of Decision :** 19-05-1976

**Acts Referred:**

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —  
Section 15(5), 16(1), 16(5), 18

**Citation :** (1976) AWC 821

**Hon'ble Judges :** P.N. Bakshi, J

**Bench :** Single Bench

**Advocate :** A. Kumar and S.C. Khare, for the Appellant;

**Final Decision :** Allowed

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## Judgement

P.N. Bakshi, J.—The dispute in the instant case relates to premises No. 12, Meerganj, Allahabad. Smt. Shashi Prabha Agarwal Respondent No. 3 is the allottee of the premises. R.N. Mehrotra Respondent No. 4 who claimed to be the sole owner of the premises in question applied to the Rent Control and Eviction Officer giving his consent to the allotment of the premises in favour of Respondent No. 3. On 25-3-1974 an allotment order was passed. The Petitioner filed an application on 6-5-1974 in which it was prayed that the allotment order in favour of Sashi Prabha Agrawal be cancelled. His, case was that R.N. Mehrotra was one of the co-owners of the property, that the family of the Petitioner including Respondent No. 4 and three others constituted a joint Hindu family of which the Petitioner was the Karta. The Respondent No. 4 has no right to give his consent to the allotment of the premises in favour of Respondent No. 3. It was also alleged that the allotment order "had been obtained by fraud and misrepresentation. This application was rejected by the Prescribed Authority. An appeal was filed before the District Judge, Allahabad which has been dismissed on 9-10-1974; hence the present writ petition.

2. I have heard counsel for the parties and have also perused the record of the

case. The Petitioner's counsel has submitted that the impugned order of District Judge is erroneous. On the face of the record, his argument is that the objections which have been taken by the Petitioners have not been considered by the District Judge. The first objection was that the Petitioner and Respondent No. 4 and 3 others were the members of a joint Hindu family and the Petitioner was the Karta thereof. Respondent No. 4 has no right to give his consent to the allotment of the premises in favour of Respondent No. 3. It may be noted here that the premises in question was never allotted before to any tenant.

3. The second point which was raised in the appeal before the District Judge was that the order of allotment had been obtained by fraud and misrepresentation. Learned Counsel submits that even this question has not been considered in the impugned order. From a perusal of annexure 1 it appears that Respondent No. 4 has represented himself as the sole owner of the premises in question and on that basis he has given his consent to the allotment being made in favour of Smt. Shashi Prabha Agrawal. The Respondent's counsel has submitted that since the Petitioner was a co-owner, along with Respondent No. 4, therefore, the solitary consent given by Respondent No. 4 for allotment of the premises was good in law. I find however, from the impugned order that the District Judge has not considered this question. It " cannot be said that this question was not raised at all because there is specific averment in the objection filed on behalf of the Petitioner that he is the Karta of the joint family and the Respondent No. 4 had no right to give his consent to the allotment. In my view, it was appropriate and proper for the District Judge to have considered this question and to have given a specific finding thereon. I farther find that question of fraud and misrepresentation has clearly been stressed before the District Judge. The grounds on which this fraud and misrepresentation is urged have been given in the objection which has been filed on behalf of the Petitioner on 6-5-1974. It was incumbent upon the District Judge to have considered this aspect also and to have recorded a finding thereof. It would not serve the interest of justice if courts below write such skatchy judgments and ignore the points which are raised before them.

4. Learned Counsel for the Respondents has submitted that the application dated 6-5-1974 filed by the Petitioner was not legally maintainable. From a perusal of Section 15 Sub-section (5)(a) it appears that a landlord or any other person claiming to be in, occupation of the building has been authorised to satisfy the District Magistrate that order of allotment passed by him is not in accordance with law. The order of allotment has been passed in the instant case u/s 16(1)(a) of the Act. It is in my view open to the Petitioner to apply to the District Judge and place before him the facts that the person who claimed to be the landlord is not the landlord of the premises and therefore the allotment order made in pursuance of his consent u/s 16(1)(a) is erroneous and should be set aside. In my view in such circumstances the provisions of Section 16(5) are wide enough to include within its ambit an application of this nature. The order which is vitiated by fraud and misrepresentation can always be set aside in the inherent

powers of the authority which has passed that order. The District Judge as mentioned above has not considered the question of fraud and misrepresentation.

5. For the reasons given by me above, this writ petition is allowed. The impugned order of the Rent Control and Eviction Officer dated 31-5-1974 and the order passed in appeal by the District Judge on 9-10-1974 are hereby quashed. The case is remanded to the Rent Control and Eviction Officer to decide the case in accordance with law. In the circumstances cost shall abide by the result.