

(1983) 02 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 91 of 1983 (Nagpur Bench)

Baroundeb Harisadan Mukerjee

APPELLANT

Vs

House Allotment Officer

RESPONDENT

Date of Decision : 28-02-1983

Acts Referred:

Transfer of Property Act, 1882 — Section 3

Citation : (1983) 85 BOMLR 163

Hon'ble Judges : Mohta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohta, J.—Harisadan Mukerjee was a government servant, He was occupying as tenant a block in a chawl situated in Gaddigudam locality within the corporation limits of city of Nagpur. The property was owned by the trust known as Hasnte Burhaniyah Fidyah Trust. He died some time in the year 1958 leaving behind Baroundeb (petitioner No. 1) and Raman (petitioner No. 2) as the sons and three daughters, as legal heirs. Baroundeb is aged 48 years and is in the employment with Steel Authority of India Limited as deputy manager presently posted at Durgapur, Raman is aged 38 years and is in the employment of Geological Survey of India, presently posted at Jaipur. All these brothers and sisters are married and live separately at different places. Baroundeb left Nagpur and joined service some time in the year 1968 and Raman some time in the year 1974-75. One Sudhansu Banerjee, the brother-in-law of the petitioners, occupied the premises for some years and presently it is locked and unused and only the skeleton furniture like a cot, a chair and a table is lying inside. The landlord is receiving the rent and the receipts are still being passed in the name of the deceased Harisadan. The tenancy is not yet determined,

2. Could under these circumstances the House Allotment Officer in exercise of the powers conferred under Clause 28 of the C.P. and Berar Letting of Houses and Rent Control Order, 1949, ("the Rent Control Order" for short) validly pass

an order of allotment? Answer to this question must depend upon whether it can be said that the block has become "vacant" as contemplated under Clause 24. Now every point has to be judged against the factual background of the case in which it arises and every word in statute has to be interpreted in the context in which it is used, considering the object sought to be achieved by the relevant legislation. First of all, the proved and undisputed facts in somewhat more details.

3. One A.K. Ghoshal, a railway employee (respondent No. 2) intimated to the House Allotment Officer, Nagpur (respondent No. 1) that late Harisadan Mukerjee, who was the original tenant of the block, had expired some time in the year 1955. His son B.D. Mukerjee is serving at Durgapur Steel Plant whereas his other son Raman Mukerjee has settled in Jaipur. The premises were in occupation of one Sudhansu Banerjee. But he is also shifting to his newly constructed house and the block in question is available for allotment and the same be allotted to him as a Central Government employee on the basis of his priority No. 104 registered on September 15, 1975. The notices were issued to the petitioners and the landlord (respondent No. 3). Raman Mukerjee filed an affidavit stating that his father had died in 1958 leaving behind him the petitioners as the sons and three daughters. The block was in occupation of the legal heirs of the deceased and as the family members reside therein, the block has not fallen vacant, and it was beyond the jurisdiction of the House Allotment Officer to allot the same to any person unless the tenancy is legally terminated by the landlord. The landlord in reply to the show cause notice stated that late Mr. Mukerjee was the allottee of the house under the Rent Control Order and that the landlord was regularly receiving the rent from, his legal heirs and that rent receipts were being issued in the name of the deceased. According to the landlord, the tenants had not intimated to the landlord that the house had fallen vacant or was likely to fall vacant. The House Allotment Officer issued directions to the landlord to make a definite statement about the year in which Mr. Mukerjee was inducted as a tenant in compliance with which it was stated that the exact date was not available in the old record but the year must be 1949. At the direction of the House Allotment Officer, the Rent Control Inspector inspected the block when he found only skeleton furniture in the same and on Shri Lalit Kumar Devendradas temporarily occupying the same. Lalit Kumar told him that Shri Banerjee is living with his family in his own house in Deonagar.

4. In the enquiry the petitioner No. 1 Baroundeb entered into witness-box and stated that his father was living in the house since before 1935. He further stated that he had given his permanent house address at Nagpur and that the block was presently occupied by the legal heirs. In the cross-examination, he admitted that all the sisters are married and are separate, and the petitioner is in permanent Government service at present posted at Durgapur and Raman was also in permanent Government service and at present posted at Jaipur. The following portion of his statement in cross-examination is to the point:

The conclusion that none of our brothers and sisters are residing in the suit

premises is partly correct and partly incorrect. I say it incorrect. Because we are serving people subject to transfers.

5. He further admitted that after construction of the house by Banarjee, the block was locked and only cot, chair and a table were kept. When questioned about Lalit Kumar he stated that Lalit Kumar was a friend of his nephew who was studying in Law. Neither Banerjee nor Lalit Kumar or any other witness were examined. The House Allotment Officer, despite the statement of the landlord that Shri Mukerjee was inducted in the premises as an allottee came to the conclusion that there was no clear evidence about the date of the occupation and therefore, he would proceed on the basis that Shri Mukerjee was in occupation since before the Rent Control Order came into force. He further held that nobody was staying in the block and that it was being kept locked and unused and that heirs of the deceased were all separate and living at different far off places and had constructed houses of their own. Considering all these circumstances, he came to the conclusion that the block was unoccupied and had become "vacant" within the meaning of Clause 24 of the Rent Control order. In pursuance of the powers vested under Clause 28(1), he proceeded to prevent the contravention of the Rent Control Order by ordering the petitioners to vacate the premises within a period of 15 days and ordered allotment of the premises to respondent No. 2. The above findings are of fact and are normally binding on me. I proceed to decide the point of law on assumption of their correctness. The principal contention raised on behalf of the petitioners before the House Allotment Officer and reiterated before me by Shri Patel, their learned Counsel, is that it is beyond the jurisdiction of the House Allotment Officer to short-circuit the normal procedure for eviction and to order delivery of possession under Clause 28 unless the tenancy is validly determined. Now, the tenancy can be determined in variety of modes mentioned in Section III of the Transfer of Property Act. Termination of tenancy and creation of vacancy are two entirely different concepts which are not always synonymous. It is easy to conceive of creation of vacancy without termination of tenancy and vice versa. Even cursory reading of Clause 24 will indicate in no unclear terms that termination of tenancy is not even indirectly referred to in it. Thus all depends upon with what intention the word "vacant" is used in this clause. Life cycle of the people shapes and must shape the profile of the law and vice versa, After all, law is not an abstraction but is a pragmatic exercise. Terrible housing accommodation shortage in urban areas is the inspiration behind the Rent Control Order. It tends to achieve maximum and best utilization and regulation of the housing accommodation. It is certainly a legislative intervention and trespass over rights and obligation of a landlord and a tenant which are governed by the provisions of the Transfer of Property Act. In the present gruelling conditions of housing shortages there is no scope to permit the luxury of keeping the premises unoccupied and idle unnecessarily except at the peril of the society.

6. Vacancy may be caused by a tenant in variety of ways. Ejectment by landlord is only one of them. Surrender, abandonment, etc. are the other forms in which

the vacancy can be created. The word "vacant" has not been defined either under the Rent Control Order or the Transfer of Property Act or the General Clauses Act. It will, therefore, be not out of place to examine its dictionary meaning. The Oxford English Dictionary gives the meaning of this word with reference to a room as "Not in use; disengaged". Now, only because some skeleton furniture is kept in the room, it cannot be said that it is in use and/or occupation. It is true that the term "vacant" is not always used in the sense of its being unused. What is really relevant is legal possession coupled with *animus revertendi*. In the present case the block is locked for quite some time and the absence of intention to come back to the property again, is apparent.

7. Now, mere physical occupation irrespective of the legal right to occupy also cannot be decisive of the matter. In this connection, Shri Kate, the learned Counsel for the allottee - respondent No. 2, has invited my attention to the decision in *Mehomal v. T.N. Behel* A.I.R [1954] Nag. 305 in which these very provisions fell for consideration. The question that arose before the then Nagpur High Court was as to whether handing over possession to a sub-tenant contrary to the provisions of the Rent Control Order amounted to creation of vacancy under Clause 24 or No. It was contended that the term "vacant" used in that clause means that the house must be physically available for occupation and if it is in occupation even of a trespasser, the House Allotment Officer could not evict him and/or proceed to allot the premises. This point was negatived holding that (at page 306, para. 6):

the question whether the house became vacant within the meaning of Clause 24 or Clause 24-A has to be determined only with reference to the tenant or the sub-tenant, who occupied the premise under lawful authority.

It seems to me that this is the correct way of looking at Clause 24 considering the terminology used as well as the legislative intention. Any other interpretation would permit a tenant or a landlord or both in combination to keep unjustifiably and illegally any premises out of the reach of the needy person and render the powers conferred under Clause 28 nugatory. Cases of tenants keeping the property unused and not leaving it specially when the rent is meagre are not uncommon. If hardship to needy persons is to be minimized, interpretation which helps in furthering the object of the legislation of releasing to needy persons as many houses as is possible, must be preferred.

8. It is true that this extra ordinary power granted under Clause 28 is not to be utilized to obviate or to supercede the normal law and procedure for eviction of a tenant. It is also true that on such facts it is permissible for the landlord to file proceedings under Clause 13(3) of the Rent Control Order for permission to terminate the tenancy. But this question arises only between the landlord and the tenant and may have a bearing on the liability to pay rent. Basic point is whether the House Allotment Officer is powerless to prevent contravention of the Rent Control Order only because the landlord is either party to the contravention or is not bothered about his rights and has chosen not to move for determination

of tenancy? The answer to this question has to be in the negative. In Mahabir Prasad Vs. Kewal Krishna and Others, , almost similar point arose with relation to the meaning of the word "vacant" as used in the U.P. (Temporary) Control of Rent and Eviction Act (3 of 1947). A similar view of the matter is taken though with relation to other piece of legislation. Thus, it seems to me that, either when the tenant has ceased to occupy the premises and leaves the area with no intention to come back to it or when any person is occupying the property in contravention of the Rent Control Order, it can be said that the house has fallen "vacant".

9. My attention was invited on behalf of the petitioners to the judgment recorded by the Division Bench of this Court in the case of Dr. S.V. Tungar v. House Allotment Officer (1962) Spl. Civil Appln. No. 174 of 1962 (Nagpur Bench) decided on October 4, 1962 (Unrep.) the gist of which is reported at Note 1963 Mh. L.J. 99 The copy of the full judgment has also been perused by me. I see nothing in it which supports the case of the petitioners even remotely. It has been held that question of "vacancy" cannot be determined dehors the legal right to occupy and "that the word "vacancy" cannot possibly mean only physical un-occupation." Thus, the clear ratio of this decision is that "vacancy" can arise in many ways and that in every case only physical un-occupation is not the test. Thus it seems to me that taking any view of the matter there is no escape from the conclusion that the block had fallen "vacant" and the petitioners were rightly ordered to hand over possession by the House Allotment Officer under Clause 24.

10. The petition is thus dismissed and the rule is discharged; but under the circumstances without any order as to costs. At the request of Shri Patel, 15 days time is granted to vacate.