

(1953) 09 AHC CK 0045

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 548 of 1953

Bhakat Shiromani

APPELLANT

Vs

The Rent Control and Eviction Officer and Another

RESPONDENT

Date of Decision : 15-09-1953

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 2

Citation : AIR 1954 All 118 : (1953) 23 AWR 541

Hon'ble Judges : Sapru, J; Mootham, J

Bench : Division Bench

Advocate : S.K. Agarwal, for the Appellant; A. Banerji, for the Respondent

Final Decision : Allowed

Judgement

Mootham, J.—This is a petition under Article 226 of the Constitution by a landlord who seeks to have quashed an allotment order made under the U. P. Control of Rent and Eviction Act in favour of respondent 2. Respondent 1 is the Rent Control and Eviction Officer, Allahabad.

2. The petitioner is the owner of a building in Motilal Nehru Road, Allahabad, which has been sub-divided into two parts known as 11A and 11B. It is a two storied building and the petitioner occupies the whole of 11A and the first floor of 11B. The premises which are the subject of the allotment order are the ground floor of 11B. The case for the petitioner is that he was not consulted before the allotment order in favour of respondent 2 was made as is required by Rule 7 of the Control of Rent and Eviction Rules.

3. The allotment order, which has not been produced, was made on 24-3-1953. The petitioner had, prior to this date, written several letters to the Rent Control Officer asking that the disputed accommodation be allotted to him, but on 21-3-1953, that is three days before the allotment order was made, he wrote a further letter to the Rent Control Officer saying that he had no objection if the premises were allotted to one Sjt. Kr. Trilochan Pandit Singh Ji.

The learned Standing Counsel, who appears for the Rent Control and Eviction Officer, has argued that as at the time of making the allotment order respondent 1 had before him this letter of the petitioner dated the 21st March, he was aware of the wishes of the petitioner and that there was, therefore, a sufficient compliance with the provisions of Rule 7, we do not think this contention can be upheld.

In the first place it is clear from the counter-affidavit filed on behalf of respondent 1 that all that the latter took into account at the time of making the order of allotment were the relative needs of the petitioner, and respondent 2, In the second place Rule 7 provides that where a portion of an accommodation falls vacant and the owner is in occupation of another portion, the Rent Control Officer must before making an allotment order, "consult the owner and shall, so far as possible make the allotment in accordance with the wishes of the owner."

In our opinion the purpose of this rule is to avoid, as far as possible, the friction and difficulties which may arise in those cases in which an owner has, in effect, to share his house with a tenant of whom for some reason he may disapprove; and that when the rule provides that the Rent Control Officer shall "consult the owner" it means that the owner has to be consulted as to the suitability of the proposed tenant. It is clear in this case that this was not done.

4. Sri P. C. Chaturvedi, who appears for respondent 2, has advanced another argument. He has contended that the petitioner was not in fact in occupation of accommodation another portion of which has been allotted to respondent 2. He says that premises 11A and 11B constitute separate "accommodation" and that consequently Rule 7 has no application. He has laid stress on the fact, which is not in dispute, that premises 11A and 11B are separately assessed by the Municipality and this he says is conclusive as regards the separate-ness of the accommodation. He has also invited our attention to the definition of the term "accommodation" in Section 2 of the Act. In our opinion it is not possible to lay down any general test by which it can be determined whether the accommodation which has fallen vacant is part of the accommodation occupied by the owner. We think each case must depend upon its own facts.

5. In the present case some confusion has been caused by the inaccurate use of the phrase "building No. 11B. It is clear that 11B is not a separate building but is part of one building which has been sub-divided into two parts. We are also satisfied on the evidence that it is not the whole of the part 11B which has been allotted to respondent 2, but only a portion of that part, namely, the ground floor, and that the first floor is in the occupation of the petitioner. We are, therefore, satisfied that the facts are such as make applicable the provision of Rule 7.

6. We hold, therefore, that the petitioner ought to have been consulted before the allotment order in favour of respondent 2 was made and that he was not consulted. The petition therefore succeeds, and we quash the order of allotment

in favour of respondent 2 dated 24-3-1953, and direct that fee Rent Control and Eviction Officer make a fresh allotment of the premises in dispute after complying with the Act and the Rules made thereunder.

7. The petitioner is entitled to his costs.