
(1997) 07 AHC CK 0164
In the Allahabad High Court
Case No : C.M.W.P. No. 35308 of 1995

D.F. Gandhi and another	Vs	APPELLANT
Rent Control and Eviction Officer, Ist, Allahabad and others		RESPONDENT

Date of Decision : 10-07-1997

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 15, 15(1), 15(2), 16, 17
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 10(7), 9, 9(1)

Citation : (1998) 1 AWC 80

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : K.M. Asthana, for the Appellant;

Final Decision : Allowed

Judgement

J.C. Gupta, J.—This writ petition has been filed for quashing the order dated 30.11.95 passed by the Rent Control and Eviction Officer 1st, Allahabad, respondent No. 1 (Annexure 6 to the writ petition) rejecting the nomination dated 17.11.95 made by petitioner No. 1, the landlord, in favour of respondent No. 2 and further directing the Rent Control Inspector to submit report after making inspection of the premises in question afresh.

2. The dispute relates to a shop bearing No. 19/35 Mahatma Gandhi Marg, Allahabad and the same is admittedly owned by petitioner No. 1. One Smt. Shobha Rani Seth was occupying the said shop as tenant of petitioner No. 1. It is said that Smt. Shobha Rani Seth, the sitting tenant, gave an information in writing through letter dated 27.9.95 to petitioner No. 1 that she was going to vacate the tenanted shop by 15.11.95 as she was likely to get another shop for carrying her business. She further stated in the said letter that she was removing all her belongings, fittings, fixtures and furnitures from the tenanted shop and would deliver its vacant possession by the aforesaid date. She requested the

landlord to take possession himself or through any person authorised by him for that purpose. This letter was received by the landlord on 29.9.95. As per the provisions of Section 15 (1) of the U. P. Act No. 13 of 1972 (hereinafter to be called as the Act) read with Rule 9 (1) intimation of expected vacancy was sent by the landlord to the respondent No. 1. This intimation was received in the office of respondent No. 1 on the same day, i.e., 5.10.95. The respondent No. 1 directed the Rent Control Inspector to make inspection and submit his report. In compliance of the said order, Rent Control Inspector made Inspection of the premises in question on 7.10.95, 9.10.95 and 14.10.95 and submitted report to respondent No. 1 on 16.10.95. In the said report, he stated that the Inspection of the shop was got done by the husband of the tenant whereupon it was found that the tenant has substantially removed the goods from the shop and only small articles were lying there. No business was being carried on by the tenant and the shop was kept locked. He further reported that the inquiry made by him revealed that the shop was likely to be vacated by the tenant in near future. However, as the tenant himself was not present, her husband refused to give anything in writing. In that report, the Inspector concluded that from the facts collected during inquiry, it appeared that the tenant Smt. Shobha Rani Seth was likely to vacate the shop in near future and this has also been verified by the landlord in the intimation of vacancy sent by him. On this report, respondent No. 1 ordered that notices be sent to all concerned. However, it appears that thereafter no further action was taken and respondent No. 1 slept over the matter with regard to the allotment proceedings. When no order of allotment was passed for long the landlord on 17.11.95 sent a letter to the R. C. and E. O. requesting him to make an order of allotment in favour of petitioner No. 2, his nominee. The R. C. and E. O., however, by the impugned order dated 30.11.95 rejected the nomination made by the landlord.

3. On behalf of respondent No. 1 counter-affidavit of one of his officials has been filed. Respondent No. 2 Smt. Shobha Rani Seth has also filed her own counter-affidavit, while respondent No. 3. who has been impleaded by the court's order dated 6.8.95, has also filed counter-affidavit, it may be mentioned here that respondent No. 3 claims himself to be an applicant for allotment.

4. Learned counsel for the petitioners argued before this Court that intimation of vacancy u/s 15 (1) can be sent by the landlord in case of actual vacancy as well as in the cases where there is likely vacancy. He further argued that since such an intimation had been sent by the petitioner No. 1 to the authority concerned on 5.10.95 under the provisions of Section 15 (1) read with Rule 9 (1), it was obligatory on the part of respondent No. 1 to have either passed an order of allotment within 21 days from the date of receipt of such intimation or to have accepted the nomination so made by petitioner No. 1, the landlord. It is contended by the learned counsel that if no allotment order is made within the aforesaid period of 21 days, the Rent Control Authority may make an order of allotment in favour of a person other than the nominee of the landlord by recording reasons, as to why he was not accepting the nomination. This could

also be done within ten days after the expiry period of 21 days and not thereafter. He argued that since in the present case, intimation of expected vacancy had been received by respondent No. 1 on 5.10.95, he was obliged to pass an order of allotment to a person of his choice within 21 days and since no such order of allotment was made, respondent No. 1 had no option but to accept the nomination of petitioner No. 1 as made and intimated to respondent No. 1 on 17.11.95.

5. On the other hand, learned counsel for respondent No. 3 argued before this Court that to attract the provisions of Section 17 of the Act it is necessary that intimation of vacancy should be sent by the landlord as well as the tenant and since in this case intimation of vacancy was only sent by the landlord, Section 17 will have no application. He further argued that though petitioner No. 1 had sent intimation that the shop was likely to be vacated by the outgoing tenant Smt. Shobha Rani Seth by 15.11.95, but in fact the shop was not vacated till 17.11.95 as Smt. Shobha Seth admitted her occupation till that date in her affidavit filed before respondent No. 1, wherein she stated that she was in occupation and was likely to vacate the shop in question in near future.

6. In order to appreciate the question involved in this petition, it is necessary to reproduce the relevant provisions of the Act-

"Section 15. Obligation to intimate vacancy to District Magistrate.--(1) Every landlord, on a building falling vacant by his ceasing to occupy it or by the tenant vacating it or by release from requisition or in any other manner whatsoever gives notice or the vacancy in writing to the District Magistrate not later than seven days after the occurrence of such vacancy, and such notice may at the option of the landlord be given before the occurrence of the vacancy.

(2) Every tenant so vacating a building shall give notice thereof in writing to the District Magistrate and also to the landlord not less than fifteen days before the vacancy.

(3) The notice under sub-section (1) or sub-section (2) shall contain such particulars as may be prescribed.

Section 17. Conditions of making allotment order.--(1) Where the District Magistrate receives an intimation, under sub-section (1) of Section 15, of the vacancy or expected vacancy of building any allotment order in respect of that building shall be made and communicated to the landlord within twenty one days from the date of receipt of such intimation, and where no such order is so made or communicated within the said period, the landlord may intimate to the District Magistrate the name of a person of his choice, and thereupon the District Magistrate shall allot the building in favour of the person so nominated unless for special and adequate reason to be recorded he allots it to any other person within ten days from the receipt of intimation of such nomination.

7. Rule 9 prescribes as to what particulars the notice to the District Magistrate

under sub-section (1) or sub-section (2) of Section 15 shall contain.

8. It is not disputed before this Court that a notice as required u/s 15 (1) was received on 5.10.95 by respondent No. 1 from petitioner No. 1, the landlord. It is also not disputed that the said notice is in conformity with Rule 9 (1) of the rules. It is only on the basis of this intimation that the proceedings were initiated by respondent No. 1 and he directed the Rent Control Inspector to make inspection and submit his report. After inspection, the Rent Control Inspector also came to the conclusion that the shop in question was likely to be vacated by the sitting tenant. It was thus a case of expected vacancy. The first question which arises for consideration, is whether the provisions of Sections 15 and 17 of the Act are applicable to the cases of "expected vacancy"?

9. In the case of *Shamshad Ahmad v. District Judge, Dehradun and others* 1984 ACJ 487, a learned single Judge of this Court held that sub-section (1) of Section 17 applies both where a tenant has ceased to occupy or expected to vacate. It was observed-

"The expression expected to vacate demonstrates that this section is applicable even in a case where vacancy has not occurred. Not only this Section 15 (1) requires every landlord to Intimate the District Magistrate if an accommodation has fallen vacant either because the tenant has ceased to occupy it or it has become vacant in any other manner whatsoever. The expression "in any other manner whatsoever" is wide enough to include occurring of vacancy u/s 12 (3) as well. Similar language was used in Section 7 of U. P. Act III of 1947. It came up for Interpretation before a Full Bench of this Court in *Mohd. Ishaq v. State*, AIR 1966 All 200. It was held that by using the words in any other manner whatsoever the Legislature has made it clear that the provisions applied in all possible cases of vacancy. In U. P. Act No. XII of 1972 same language has been used. The Legislature, therefore, accepted interpretation of expression by the Full Bench of this Court. There is, therefore, no reason to confine Section 17 (1) only to these cases where tenant has ceased to occupy and the vacancy has been intimated by the landlord. The vacancy may arise by ceasing to occupy the premises or it may arise u/s 12 by removal of substantial effects or by construction of the house by the tenant. In law in either case the vacancy arises. The authorities below, therefore, were not justified in ignoring Section 17 (1) of the Act."

10. Similar view was taken in the case of *Shiv Charan Lal Gulati v. Smt. Kamla Devi*, 1983 ACJ 148. In this case also it was held that the provisions of Section 15 (1) are also applicable to a building, which was going to fall vacant.

11. A perusal of Rule 9 would also lead to same conclusion inasmuch as sub-clause (f) of sub-rule (1) requires mentioning of the actual or expected date of vacancy. If Section 15 (1) was not applicable in cases of expected vacancy, clause (f) of Rule 9 would not contain the words "expected date of vacancy." Therefore, there can be no doubt that Section 15 (1) is applicable not only to the

actual vacancy but also to cases where the building is likely to fall vacant on account of cessation of occupation by the sitting tenant.

12. The next point which arises for consideration is whether after receiving intimation of expected vacancy, the District Magistrate possesses any power to make an order of allotment before the building is actually vacated by the sitting tenant? Section 16 gets attracted as soon as there is an actual vacancy or there is an expected vacancy. Sub-clause (a) of Section 16 states that the District Magistrate may by order require the landlord to let any building which is or has fallen vacant or is about to fall vacant. Rules prescribe Form B for allotment order. A perusal of the same also leads to the same inference that a building can also be allotted in a case of expected vacancy even before it is actually vacated by the sitting tenant. The allotment order in such cases takes effect from the date the allottee takes over possession of the building on vacation by the outgoing tenant.

13. Now it has to be seen as to when and in what circumstances the landlord becomes entitled to get his nomination accepted under the provisions of Section 17 of the Act. A bare perusal of the provisions of Section 17 (1) makes it clear that a right is conferred on the landlord after a lapse of a specified time and the provisions are attracted only in those cases where intimation of vacancy or expected vacancy is sent by the landlord himself u/s 15 (1) and where such an intimation is sent, the landlord has a right to know within 21 days of the date of receipt of intimation if any order of allotment has been made so that he may not lose rent.

14. A combined reading of Section 17 (1) and Rule 10 (7) makes it clear that the provisions contained therein on one hand cast a duty on the District Magistrate to make order of allotment within a specified period and on the other hand, they also deal with the consequences on the failure of the District Magistrate to take timely action, The object of these provisions is to safeguard the interest of the landlord, so that he may not suffer loss of rent for the inactions and omissions of the District Magistrate. These provisions may be summarised as under:

(i) where an intimation of vacancy, actual or expected sent by the landlord under sub-section (1) of Section 15 is received by the District Magistrate, he is required to make order of allotment within 21 days from the date of receipt of such intimation ;

(ii) where no such order of allotment is made within the aforesaid period, a right accrues to the landlord to get a person of his choice as his tenant and for that matter, he may send to the District Magistrate the name of his nominee ;

(iii) where such nomination is received by the District Magistrate, normally he has to accept that nomination and make order of allotment in his favour;

(iv) however, the District Magistrate may disregard the nomination of the landlord and allot the building to a person other than the nominee, but such

power is exercisable :

- (i) sparingly and in exceptional cases,
- (ii) for a public purpose of urgent nature.
- (iii) within a period of ten days from the date of receipt of nomination and not thereafter, and
- (iv) for special and adequate reasons to be recorded in writing.

15. From the above, it is clear that Section 17 (1) confers a right upon the landlord to select a person of his choice as his tenant if no order of allotment is made by the District Magistrate within 21 days from the date of receipt of intimation of vacancy either actual or expected. And if no order of allotment is made in favour of any other person within 10 days from the date of receipt of nomination for special and adequate recorded reasons, the District Magistrate has no option but to allot the premises in favour of the nominee of the landlord and he has no power or jurisdiction to make any departure therefrom.

16. In *Vinod Kumar Darbari v. District Judge, Allahabad and others* 1980 ARC 442, Hon"ble N.D. Ojha, J., as he then was held that:

"That requirement of Section 17 (1) of passing an order of allotment within 21 days of the receipt of the intimation of the vacancy from the landlord is a statutory one and has been apparently incorporated in order to save the landlord from the loss of rent. The requirement of the action is meant to be complied with and not to be ignored on just lame excuse."

17. The Hon"ble Supreme Court in the case *Uzma Nasir (Smt.) vs. Narendra Kaur (Smt.) and others*, held that where the intimation of vacancy is communicated to the District Magistrate by the landlord, it is permissible for the District Magistrate to pass an order of allotment within 21 days of such intimation and where no communication of making any allotment order is made to the landlord within 21 days from the date of receipt of intimation of vacancy, the landlord has to name a person of his choice for allotment, thereupon the District Magistrate shall have to allot the same in favour of the person so nominated by the landlord unless for special and adequate reasons to be recorded, he (District Magistrate) allots it to any other person within ten days from the receipt of intimation of such nomination. It was held that under the provision of District Magistrate shall allot and there is no other option left to him.

18. Similar view has been taken by Hon"ble Sudhir Narain, J., in a recent decision of this Court in *Irshad Ahmad u. VIIth Additional District Judge, Aligarh and others* 1994 (2) ARC 37, that the landlord gets a right to nominate a person of his choice for purposes of allotment of a building after twenty-one days from the date of intimation of vacancy. It has further been held in the said decision that the period of twenty-one days is to be counted from the date of intimation of vacancy and not from the date of declaration of vacancy and 1 see no reason

to differ from the view taken in the said decision.

19. As already stated, in the present case, admittedly no order of allotment was made by respondent No. 1 within twenty-one days from the date of receipt of intimation of expected vacancy sent by the landlord. The intimation was given on 5.10.95 and even the Rent Control Inspector had submitted report on 16.10.95 that the shop was likely to be vacated by the sitting tenant, yet respondent No. 1 for the reasons best known to him, slept over the matter and did not make any order of allotment. After the expiry of period of twenty-one days, petitioner No. 1, the landlord thus became entitled to intimate his nomination to the District Magistrate. The petitioner No. 1 sent the nomination on 17.11.95, i.e., after 43 days of the date of receipt of intimation of vacancy. In such a situation, respondent No. 1 was bound to accept the nomination of petitioner No. 1 and he had no other option left with him. He did not even exercise his discretion within ten days from the date of receipt of intimation of nomination sent by landlord, for making an order of allotment in favour of any person other than the nominee of the landlord. Thereafter he was left with no option but to accept the nomination of the landlord and he had no right or power to cancel the nomination made by petitioner No. 1 in favour of petitioner No. 2 and thus the impugned order is wholly illegal and without jurisdiction. The impugned order, therefore, cannot be sustained. The next question which arises for consideration is whether in the circumstances of the case, the case should be sent back to respondent No. 1 for making formal order of allotment or not. Learned counsel for the petitioner relying upon the decision in (sic) Sajid Ali Shah v. R. C. & E. O., Aligarh and others 1986 ARC 24, urged that no useful purpose is going to be served by sending the case back to respondent No. 1 and the respondent may be directed to treat petitioner No. 2 as an allottee of the accommodation in dispute. Such a direction was issued in the peculiar circumstances of that case and I am of the opinion that a formal order of allotment may still be necessary.

20. In the circumstances and for the reasons recorded above, this writ petition succeeds and is hereby allowed. The impugned order of respondent No. 1 dated 30.11.95 as contained in Annexure 6 to the writ petition is quashed and respondent No. 1 is directed to issue a formal order of allotment in favour of petitioner No. 2 within 15 days from the date a certified copy of this judgment is produced before him. In the circumstances, I make no order as to costs.