

(1975) 01 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 853 of 1972

Dwarikadhish Ji and others

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 29-01-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7F

Citation : (1975) 01 AHC CK 0026

Hon'ble Judges : R.L.Gulati, J

Final Decision : Allowed

Judgement

Gulati, J.

This is a petition under Article 226 of the Constitution by a charitable trust known as "Sri Dwarikadhish Ji Maharaj Virajman Mandi, Dwarikadhish Road, Kanpur", through its Sarvarakar Sri Radha Krishna Singhanian. The trust owns extensive properties in the city of Kanpur and has in its employment a large number of persons to look after the properties and other affairs of the trust. House No. 7J95, situated in Tilak Nagar in one of the properties belonging to the trust which shall hereinafter be referred to as the house in dispute. It was in the tenancy of one Smt. Heeramanek at a rent of Rs. 1201 per month. On February 9, 1971 an application on behalf of the trust was moved before the District Magistrate, Kanpur saying that the house in dispute was likely to fall vacant and that the same be released in favour of the trust so as to enable it to provide officecumresidence accommodation to its wholetime manager. It was also stated in this application that the house in dispute will not be let out. This application was supported by an affidavit of Sri R.K. Singhanian. The application was passed on for disposal to Sri G.K. Tandon, the Rent Control and Eviction Officer, Kanpur. He conducted an enquiry through his Inspector, who reported that the previous tenant had gone to London and that the trust had a large number of houses which were occupied by tenants. Sri Tandon ultimately rejected the application on June 7, 1971 on the finding that the need of the applicant was neither

genuine nor bone. fide. In arriving at this finding he took into consideration the following circumstances:

(i) That no particulars had been given about the status of the man who was engaged as a whole time Manager.

(ii) It was doubtful if the manager would of such a status as to live in a house carryyng rent of Rs. 120/ per month.

(iii) That the house in dispute was fetching good rent and it was inadvisable for the Manager of the Trust to forego the Rental income.

(vi) Alternative arrangement should be made for the residence of the manager in a house carrying lesser rent.

Two days later, on June 9, 1971 the house was allotted in favour of the 3rd respondent, Smt. Krishna Kaul, the wife of the District Magistrate, Kanpur, Sri P.N. Kaul.

The petitioner has challenged the orders of the Rent Control and Eviction Officer on the ground of mala fide.

He says that the Rent Control and Eviction Officer is under the subordination of the District Magistrate, whose wife wanted the house to be allotted to her. It is further alleged that the Rent Control and Eviction Officer and the District Magistrate had planned in advance to allot the house to the wife of the District Magistrate after rejecting the petitioner's application for release. It has been further alleged that the disposal of the petitioner's release application had been deliberately delayed until the Civil Courts had closed so that the petitioner may not be able to obtain a stay order. The petitioner, however, promptly challenged the impugned orders by means of a writ petition in this Court during the summer vacation and obtained a stay order. Thereafter he moved the State Government under Section 7F of the Rent Control and Eviction Act. 1947. The writ petition was eventually dismissed as the petitioner had already availed of the alterminative remedy of a representation under Section 7F to the State Government. The revision petition of the petitioners has been rejected by the Sate Government by its order dated February 2, 1972 and the petitioners have now approached this Court under Article 226 of the Constitution.

The State Government, like the Rent Control and Eviction Officer, has dwelt upon the desirability of the house being released for the use of the Manager. According to the State Government even if the trust required a whole time manager for the better management of the Trust properties, it is not necessary that the house in dispute alone would be earmarked for him. The house in dispute is fetching a rent of Rs. 120/ per month and for that rent some other house can be found and even if the trust has to pay a little more rent it can easily afford it.

Now, the reasonings of the State Government and the Rent Control and Eviction Officer are diametrically opposed. According to the Rent Control and Eviction

Officer the house in dispute was too expensive for the Manager and it was not advisable for the trust to lose the handsome income of Rs. 120/ per month. According to the State Government, the trust could easily provide to the manager costlier accommodation looking to the magnitude of the properties involved.

Whether the State Government is right or the Rent Control and Eviction Officer is right is not material because, in my opinion, the approach of both these authorities is wholly erroneous. It appears to me that neither of the two authorities seem to have any idea as to what are the requirements of rule 6 of the U.P. (Temporary) Control of Rent and Eviction Act, under which a release application is made by a landlord. Rule 6 provides:

"6. Occupation by landlord: When the District Magistrate is satisfied that an accommodation which has fallen vacant or is likely to fall vacant is bona fide needed by the landlord for his own personal occupation, the District Magistrate may permit the landlord to occupy it himself."

Obviously the only requirement is that, a landlord must need the house which has fallen vacant or is likely to fall vacant bona fide for his personal occupation. The word "bona fide" has been used in contradistinction to mala fide meaning thereby that the landlord actually wants to occupy the house himself and the application for release is not a device to obtain the possession of the house to let it out to someone else. Whether the landlord is acting wisely or foolishly in wanting to live in his own house is nobody's concern. It is not within the jurisdiction of the Rent Control authorities to reject the application on the ground that it will not be advantageous to the landlord to occupy the house himself. The landlord is absolutely free to make his own choice. If he is prepared to sacrifice his income and to live in the house himself, there is no law which prevents him from doing so. All that is necessary is that the Rent Control and Eviction Officer must be satisfied that the request for personal occupation is a genuine one and not a makebelieve. Beyond that the Rent Control and Eviction Officer or the State Government has no jurisdiction to go.

The petitioner in the release application had specifically stated that the house in dispute would not be let out but would be used for accommodating the Manager of the Trust. This statement was supported by a duly sworn affidavit of the Sarvarakar Sri R.K. Singhanian, who is obviously a man of status. There is no hint much less a finding that the request for personal occupation was a mala fide one in the sense explained above, namely, that the plea for personal occupation was false. As such, the Rent Control and Eviction Officer had no discretion in the matter. He was bound to permit the landlord to occupy it himself. There is no dearth of authorities for this view. I may quote some.

In *Lala Trilok Nath v. S. D. Verma* 1956 A.L.J. 33 this is what a Division Bench of this Court held at page 35:

"When it is brought to the notice of the District Magistrate that an accommodation which has fallen vacant or is likely to fall vacant is required by

the landlord for his own personal occupation it is the duty of the District Magistrate to satisfy himself whether such is really the case; or in other words, whether the landlord does bona fide require the accommodation for his own personal occupation. If he comes to the conclusion that the landlord does bona fide require the accommodation for his own personal occupation, it is his duty ordinarily to make the allotment in his favour, because as the owner of the house he has preference over every one else."

The same view has been expressed in *Smt. Nand Rani v. District Magistrate* 1959 A.L.J. 25 and in *Mohammad Wahid v. Rent Control and Eviction Officer, Kanpur* 1967 A.L.J. 941. In the latter case it has held that the only question that arises upon an application under Rule 6 is whether the application is a bona fide one. The question of considering the needs of a tenant does not arise at all in such a case as it does in a case of permission under Section 3 of the Act because there is no tenant at this stage whose needs have to be considered.

In *Ram Surat Singh v. Rent Control and Eviction Officer* 1964 A.L.J. 412 a Full Bench of this Court held that the provisions of Rule 6 are mandatory, and, if the District Magistrate is satisfied that the landlord bona fide requires the accommodation for his own personal occupation, he must allow the application under Rule 6.

In *Rent Control and Eviction Officer v. M. M. Laloraya* A.I.R. 1972 All. 559 a Division Bench of this Court relying upon the decision of the Full Bench in the case of *Ram Surat Singh* (supra) held that the Rent Control and Eviction Officer had no jurisdiction to enter into the sufficiency of the needs of the landlord. In other words, the law seems to be that if a landlord wants to occupy an accommodation, which has fallen vacant for his personal use. the consideration that the accommodation would be too large for him or that his need would be met by a smaller accommodation is wholly irrelevant.

All that the Rent Control Authorities are required to do is to satisfy themselves that the request for personal occupation is bona fide.

In *Rana Dev v. Radhey Shyam* 1967 A.L.J. 698 it was held that if the satisfaction of the District Magistrate is based upon irrelevant considerations, it is no satisfaction in the eye of law and the High Court can hold that the vital condition under Rule 6 has not been complied with.

It has been demonstrated above in the instant case that the Rent Control and Eviction Officer and the State Government had both misdirected themselves by dealing with the application of the petitioner on irrelevant considerations totally overlooking the real requirement of the law.

This is enough to dispose of this petition and it is not necessary to deal with the allegations of mala fide. However, there is one aspect which needs to be noticed. From the counteraffidavit of Mr. P.N. Kaul, the District Magistrate, it appears that the Rent Control and Eviction Officer after considering the various applications for

allotment made a proposal that the house in question may be allotted to Mrs. Kaul and this proposal was accepted by him. In my opinion, Mr. Kaul would have been well advised to have abstained from dealing with any such proposal from the Rent Control and Eviction Officer. The proposed allottee was his own wife and it would have been proper for him to have kept himself out of the picture. May be Mr. Kaul was wholly impartial but when the matter was being contested so hotly by the landlord he should not have used his authority in favour of his own wife.

In the result the petition succeeds and is allowed. The order of the Rent Control and Eviction Officer dated June 10, 1971 and of the State Government dated February 2, 1972 rejecting the release application of the ptitioners are quashed. The allotment order dated June 10, 1971 in favour of Smt. Krishna Kaul is also quashed. The Rent Control and Eviction Officer is directed to restore the petitioner's application to its original number and to dispose it of afresh in accordance with the law, and in the light of the observations made above.

The petitioners are entitled to the costs.