

**(1987) 03 AHC CK 0104**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 8105 of 1983**

|                                           |            |
|-------------------------------------------|------------|
| Fateh Bahadur Srivastava and Another      | APPELLANT  |
| Vs                                        |            |
| IInd Additional District Judge and Others | RESPONDENT |

**Date of Decision :** 12-03-1987

**Acts Referred:**

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

**Citation :** (1987) 03 AHC CK 0104

**Hon'ble Judges :** A.N. Varma, J

**Bench :** Single Bench

**Advocate :** V. Sahai, B. Dayal and B.D. Agarwala, for the Appellant; Ashok Mehta, Rajesh Tandon and S.C., for the Respondent

**Final Decision :** Allowed

## Judgement

A.N. Varma, J.—This petition is directed against two Orders, one, dated 27.03.1982 passed by the Rent Control and Eviction Officer allotting the accommodation in dispute, namely, house No. 377/2 Civil Lines, Roorkee to the Respondent No. 3 and, the Ors. dated 27.5.1983 passed by the learned IInd Additional District Judge Saharanpur, dismissing two revisions filed by the Petitioners.

2. These are the relevant facts. Petitioner No. 2 Smt. Shakuntala Devi is the landlady of the house in dispute (No. 377/2). The house was formerly occupied by one Shiromani Pathak. Upon Shiromani Pathak's vacating that house, the landlady sent an intimation through a letter dated 8.12.1981 to the Rent Control and Eviction Officer u/s 15 of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (the "Act" for short). In that letter, she also stated that she would like the accommodation to be allotted to Fateh Bahadur Petitioner No. 1. No allotment was made by the Rent Control and Eviction Officer within 21 days as contemplated u/s 17(1) of the Act. After waiting for 21 days

from the date on which the intimation was received by the Rent Control and Eviction Officer, the landlady sent another intimation to the Rent Control and Eviction Officer which was received by the latter on 4.1.1982 reiterating her desire that the accommodation be allowed to Fateh Bahadur. No allotment order was made within the statutory period of ten days even after the receipt of the second intimation. On 20.1.1982 one Dr. J.K. Ahuja, Respondent No. 3 herein made an application for allotment and by an Order dated 27.3.82, the Rent Control and Eviction Officer allotted the accommodation to Dr. Ahuja. The Rent Control Eviction Officer observed in his order that as Fateh Bahadur was residing with his son in another house, namely, house No. 161/10, Civil Lines, it would not be just and proper to allot the accommodation to him. The Rent Control and Eviction Officer seems to have thought that the dispute before him was one solely between Fateh Bahadur on the one hand and other applicants for allotment on the other. He did not consider it necessary to consider the effect of the nomination made by the landlady.

3. Aggrieved by the order passed by the Rent Control and Eviction Officer, both Fateh Bahadur as well as Smt. Shakuntala Devi preferred revision. Both these revisions have been dismissed by the learned Additional District Judge by separate but identical orders passed on the same date.

4. The Petitioners feeling aggrieved by this order have approached this Court under Article 226 of the Constitution. For the Petitioner, it is submitted that the provisions of Section 17(1) are mandatory and they admit of no such exception as seems to have been assumed by the Rent Control authorities. Learned Counsel contended that even the revisional Court ignored the true import of Section 17(1) which is primarily concerned under certain circumstances with a very important right which the Legislature has conferred on a landlord, namely, that of making a nomination in favour of a person of his choice. It is urged that the grounds upon which the nomination made by the landlady have been ignored by the Rent Control and Eviction Officer as well as by the Additional District Judge were totally irrelevant and extraneous to the scheme of the Act.

5. The contentions seems to be well founded and must be accepted. Section 17(1) of the Act provides:

#### 17. Conditions of Making Allotment Order

(1) Where the District Magistrate receives an intimation, Under Sub-section 11 of Section 15, of the vacancy or expected vacancy of building an 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.

6. The next relevant provision is Rule 10(7) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules 1972. The same reads as follows:

(7) The power of the District Magistrate u/s 17(1) to disregard the nomination by the landlord in the event of the District Magistrate's failure to make the allotment order within twenty-one days from the date of receipt of intimation of vacancy or expected vacancy of a building shall be exercised very sparingly and only for a public purpose of an urgent nature the District Magistrate considers it necessary so to do.

(Emphasis added)

7. Section 17(1) has been the subject of interpretation in several decisions of this Court. It is, however, unnecessary to burden judgment with all of them. I shall content myself by referring to only one of them which, in my opinion, completely covers the controversy.

8. Construing Section 17(1) of the Act and its true import it was observed by a learned Single Judge of this Court in the case of *Mandir Ram Janki Vs. Narendra Kumar and Others*, summed up law thus:

Section 17 of the Act provides that where the District Magistrate receives an intimation Under Sub-section (1) of Section 15 of the vacancy or expected vacancy of a building an 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 reasons to be recorded he allots it to any other person within ten days from the receipt of intimation of such nomination. A bare reading of this provision indicates that the terms of the provision that the order of allotment shall be passed by the authority concerned within 21 days are mandatory. No exception has been provided by the legislature. This is evident from the fact that immediately after the expiry of 21 days a right accrues in favour of the landlord to nominate his tenant and the legislative scheme appears to be that in the normal course the nominee of the landlord should be allotted the accommodation. At this stage, the contents of Rule 10(7) of the Rules may be considered. This rule provides that the discretion of the District Magistrate u/s 17(1) to disregard the nominee of the landlord, in the event of District Magistrate failure in making an allotment order within 21 days from the date of the receipt of the communication of the vacancy or expected vacancy of the accommodation, shall be exercised very sparingly and only for a public purpose.

(Emphasis supplied)

9. With respect I entirely agree with this interpretation. The language of Section

17(1) is peremptory and unambiguous. So also of Rule 10(7). Rule 10(7) leaves no manner of doubt that the nomination made by the landlady u/s 17(1) can be ignored only in exceptional circumstances and only for a public purpose of an urgent need. The nomination made u/s 17(1) cannot in my view, be ignored by comparing the competing claims of different applicants for allotment. Section 17(1) does not contemplate that the nomination can be negated on the ground that an applicant for allotment has a better claim than that set up by the nominee.

10. Reverting to the facts of the present case the position is that admittedly no allotment order was made within 21 days of the receipt of the intimation from the landlady. The landlady had thereupon intimated to the Rent Control and Eviction Officer the name of her nominee. Again no allotment was made within ten days of such nomination. Further in the allotment order eventually made in favour of the Respondent No. 3 no special or adequate reasons were disclosed for ignoring the landlady's nominee. The only ground stated was that Fateh Bahadur is already residing with his son, which could hardly be a valid ground for disregarding the nomination of the landlady or even the claim of Fateh Bahadur. There is no evidence that Fateh Bahadur had at any point of time, directly or tacitly, shown any disinclination to occupy the premises in dispute. Indeed feeling aggrieved he had filed a revision. It is, however, unnecessary to dilate on the need of Fateh Bahadur as admittedly he has left that house as noted by the Revisional Court itself. That is why the revisional court has not rested its decision on that ground. It carved out a new and different ground for upholding the allotment order.

11. The ground on which the revisional court has disregarded the nomination made by the landlady is equally fallacious. It took note of the fact that Fateh Bahadur has been after the passing of the order by the Rent Control and Eviction Officer allotted another house, namely, house No. 377/1/2 which constituted a special circumstance within the meaning of Section 17. Having found this the revisional court dismissed the nomination made by the landlady in these words:

...But once the nominee of the landlord is allotted another accommodation, there is no sense allotting the accommodation in question to him again. As a matter of fact, doing so would rather frustrate the very purpose underlying the law of the Rent Control.....

At another place, he observed that a too technical view should not be taken in interpreting the Section 17 of the Act.

12. The revisional court has committed the same error as the Rent Control and Eviction Officer namely, treating the dispute as if it was one confined only to Dr. Ahuja on the one hand and Fateh Bahadur on the other. It totally ignored the right or claim of the landlady for the protection, of which Section 17 was enacted. The right of nomination conferred on the landlords is not a mere empty formality. It has a definite purpose and intent, namely, that save for special

reasons related to a public purpose, the choice of the landlord must prevail. This is the combined effect of Section 17(1) and Rule 10(7). So viewed the revisional court's approach was clearly wrong. It has failed to conceive the true legal import of the landlady's choice in the matter.

13. The courts below have not found that Fateh Bahadur is no longer interested in the disputed accommodation. Indeed Fateh Bahadur was the first to apply for the disputed accommodation. He did so on 31.10.1981 and it was only after the accommodation in dispute came to be allotted to Dr. Ahuja that Fateh Bahadur who is a retired Government Treasury Officer made an application for allotment of another house No. 377/1/2. The house in which he was residing with his son became the subject matter of a litigation and has since been got vacated. Consequently, in view of the prevailing uncertainty Fateh Bahadur could not be legitimately expected to sit back and not to look in other directions for a suitable accommodation. If in these circumstances, he applied for and was allotted another accommodation it could not be a valid ground for assuming that he was no longer interested in the disputed accommodation and that the landlady's nomination has ceased to be matter of consequence.

14. Learned Counsel appearing for Fateh Bahadur has categorically stated before me that Fateh Bahadur is prepared to vacate house No. 377/1/2 and that he shall have no objection to the allotment of that house in favour of Dr. Ahuja or to any one for that matter. However, in order to safeguard the interest of Dr Ahuja a direction could be given to the Rent Control and Eviction Officer to allot the house to Dr. Ahuja if Dr. Ahuja makes an application in that behalf. It is apparent that the two houses, namely, house No. 377/1/2 and the house in dispute are both in close proximity and in the same locality Civil Lines.

15. In the result, the petition succeeds and is allowed. The impugned orders passed by the Rent Control and Eviction Officer dated 27.3.1982 as well as those passed by the learned Additional District Judge in Rent Control Revision No. 180 of 1982 and 235 of 1982 dated 27.5.1983 are quashed. The Rent Control and Eviction Officer shall, however, allot house No. 377/1/2 which was allotted to Fateh Bahadur Under Order dated 10.12.1982 to Dr Ahuja, Respondent No. 3 herein within a month of the date on which Dr. Ahuja makes an application in that behalf together with a certified copy of this judgment. The Rent Control and Eviction Officer shall also allot the disputed accommodation to Sri Fateh Bahadur Srivastava, Petitioner No. 1 in pursuance of the nomination made by the landlady (Petitioner No. 2). The parties shall bear their own costs.