
(1956) 08 AHC CK 0034

In the Allahabad High Court

Case No : Civ. Misc. Application No. 63 of 1955

Gada Dhar Pd. Sharma

APPELLANT

Vs

The District Magistrate, The Dy. Town Rationing Officer (R.O.)
and Sri Manik Chand Jain, Advocate

RESPONDENT

Date of Decision : 24-08-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226

Citation : (1956) 26 AWR 753

Hon'ble Judges : V.D. Bhargava, J

Bench : Single Bench

Advocate : B.K. Dhaon and T.N. Roy for Opposite Parties 1 and 2 and Uma Shankar and T.N. Chaudhri for Opposite Party 3, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Bhargava, J.—This is an application on behalf of Gadadhar Prasad under Article 226 of the Constitution of India. He was an employee of the Northern Railway and was living with his father Pt. Ram Chandra Sharma. After the death of his mother in May 1952 the relations between the father and son became strained and the Petitioner started living in the lower portion of the house but after some time as the relations had been strained, there was a regular partition between the Petitioner and his father, by a Registered Partition Deed dated 2-7-1952. The house in dispute was allotted to the Petitioner and his father was given the house in the lower portion of which the Petitioner was living. The house in dispute was known as Kashi Bhawan in Ghoush Nagar. This house was occupied by two tenants, one Sri Brij Mohan and the other Sri Mahesh Prasad Nigam. Sri Mahesh Prasad Nigam, one of the tenants, got his house constructed in Mohalla Kundri Rakabganj, Lucknow, and he promised to give the possession of the house to the Petitioner when his house was constructed as the Petitioner was in dire need of the house on account of the partition. When the house was about to be vacated by Sri Mahesh Prasad Nigam, the Petitioner moved an

application on 18-1-1955 informing the Rent Control and Eviction Officer that the accommodation in possession of Sri Mahesh Prasad Nigam had fallen vacant and the Petitioner having separated from his father wanted that house to be allotted to him. The Rent Control and Eviction Officer inquired of the petitioner as to the exact date when the house was to be vacated. In the meantime on 5-3-1955, the Petitioner was informed that the house had been allotted to one Fateh Bahadur Nigam. The Petitioner moved another application before the Rent Control and Eviction Officer that his need has not been considered at all and this house had been allotted to a person in disregard of his need and there had been a violation of Rule 6 of the Rent Control and Eviction Act and therefore he prayed that the house be allotted to him.

2. The Rent Control and Eviction Officer, as the affidavit shows, without giving any opportunity to the Petitioner, rejected his application. The Petitioner thereafter filed a suit for injunction against Fateh Bahadur Nigam, the allottee, in the court of Munsif and a temporary injunction was issued. He also served a notice u/s 80, CPC for filing a suit for permanent injunction against opposite party No. 2 and the District Magistrate for having violated Rule 6 made under U.P. (Temporary) Control of Rent and Eviction Act. The house was actually vacated by Sri Mahesh Pd. Nigam on 29-3-1955 when the applicant took the possession of the house. Since there was an order injunction against Mr. Fateh Bahadur Nigam not to occupy the house, the Rent Control and Eviction Officer, reallotted this house to one Sri Manik Chand Jain, Advocate. Later on since the allotment in favour of Sri Fateh Bahadur Nigam was cancelled and there had been a re-allotment, the suit of the Petitioner was dismissed because it had become infructuous.

3. Again, the Petitioner moved an application on 19-4-1955 pressing his need but that application was also rejected by the opposite party No. 2 without giving any opportunity to him on 25-4-1955. Thereafter a suit was filed again for an injunction and a temporary injunction was issued. The Rent Control and Eviction Officer issued a notice u/s 7A(i) of the Act that the Petitioner should show cause why the Petitioner should not be ejected and allottee be put in possession of the house. The Petitioner filed objections to that notice. The Petitioner filed two affidavits of his neighbors showing the strained relations with his father and also to the fact that the Petitioner was living; in the lower portion of the house of his father. He also filed two medical certificates of the doctor showing that his wife was seriously ill and he wanted the house immediately. In spite of all this, the Rent Control and Eviction Officer did not allot the house to him.

4. Thereafter a revision was filed before the Commr., Lucknow which was also dismissed on 29-7-1955. Aggrieved by those decisions, the Petitioner has come up to this Court in writ petition.

5. The learned Counsel for the Rent Control and Eviction Officer says that he has instructions not to oppose the petition and I think the stand taken by him is a correct one. The Rent Control and Eviction Officer, it appears from the

statements of the facts of the case, has not at all taken into consideration the need of the landlord. The landlord is Under Rule 6 entitled to preference and unless the Rent Control and Eviction Officer thinks that his need is not genuine in the sense that he does not want to live in the house but wants to take it for somebody else, it is incumbent on the Rent Control and Eviction Officer to allot the house to the landlord. There can be no doubt that the Petitioner is in dire need of an accommodation and by virtue of a registered partition deed the house in which he was living had been given to his father. There was enough evidence on oath before the Rent Control and Eviction Officer that the relations between the father and the son had been strained and his wife had been ill. Under the circumstances, the Rent Control and Eviction Officer acting Under Rule 6 should have allotted this house to the Petitioner. The house having not been allotted to the Petitioner he had violated Rule 6 made under the U.P. (Temporary) Control of Rent and Eviction Act. I, therefore, quash the order of the Rent Control and Eviction Officer dated 12-4-1955 and of the Commissioner dated 29-7-1955 and issue a writ of mandamus directing the officers to act according to the mandatory provisions of Rule 6. Since the application was not opposed by the Rent Control and Eviction Officer, I make no order as to costs.