
(1964) 09 AHC CK 0011
In the Allahabad High Court
Case No : Special Appeal No. 391 of 1964

Girja Debi and Another

APPELLANT

Vs

The Rent Control and Eviction Officer and Others

RESPONDENT

Date of Decision : 22-09-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh (Temporary) Control of Rent and Eviction Rules, 1949 — Rule 6, 7

Citation : AIR 1965 All 366

Hon'ble Judges : M.C. Desai, C.J;R.S. Pathak, J

Bench : Division Bench

Advocate : Gauri Shanker Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

Desai, C.J.—Appellant No. 1 is the landlord of an accommodation and appellant No. 2, is only her representative and has no interest in the accommodation or in the building of which the accommodation is a part. The accommodation is a portion of a building and another portion of it is in the occupation of appellant No. 2. The accommodation fell vacant and appellant No. 1 applied to the District Magistrate that an order be passed permitting her to occupy it herself. The District Magistrate ordered her to let it to another person, respondent No. 3. She went up in revision against the order but the commissioner refused to interfere. Then she and the other appellant filed the petition for certiorari for the quashing of the order of the District Magistrate on the ground that it was passed in infringement of the provisions of Rules 6 and 7 of the U. P. (Temporary) Control of Rent and Eviction Rules.

Rule 6 is to the effect that

"When the District Magistrate is satisfied that an accommodation is bona fide needed by the landlord for his own personal occupation, he may permit him to occupy it himself,"

and rule 7 is to the effect that,

"Where a portion of an accommodation falls vacant and the owner is in occupation of another portion thereof, the District Magistrate shall, before making the allotment order, consult the owner and, shall, so far as possible, make the allotment in accordance with the wishes of the owner."

2. Our brother, G.C. Mathur held that the District Magistrate Infringed the provisions of neither Rule 6 nor Rule 7 and refused to quash the order. The appellants have come up in appeal.

3. As regards Rule 7, we find that it has no application to the facts of the instant case for two good reasons. One is that the whole of the accommodation has fallen vacant and not a portion-of it. One Ham Prasad was a tenant of the accommodation that has fallen vacant and the whole-of the premises of which he was a tenant has fallen vacant. Rule 7 applies when a portion of an accommodation falls vacant and not when the whole of an accommodation falls vacant. When the whole falls vacant, it is impossible to predicate that a portion of it is in the occupation of another person. If a person is in another's occupation the whole does not fall vacant at all. The other reason is that the appellant, who alone is the landlord, is not occupying a portion of the accommodation that has fallen vacant. Not only is she not occupying a portion of the accommodation that has fallen vacant, but also she is not occupying the remaining portion of the building of which the accommodation is a part.

The remaining portion is in the occupation of appellant No. 2 and not appellant No. 1. Under Rule 7 the other portion must be in the occupation of the landlord himself and not his representative or agent. What is required is actual occupation and not possession. The appellant is occupying another building. As Rule 7 was not applicable, the District Magistrate was not required to pass an order in accordance with the wishes of appellant No. 1.

4. As regards Rule 6, the District Magistrate might have been required to permit appellant No. 1 to occupy the accommodation herself, if he had been satisfied that it was bona fide needed by her for her own personal occupation. Here the District Magistrate has found that it was not required by her for her own personal occupation and this is a finding of fact. This Court is powerless to interfere with a finding of fact recorded by an inferior tribunal on consideration of materials placed before it. Certiorari can be issued only on the ground of want or excess of jurisdiction or manifest error of law and arriving at an unsound or Improper finding of fact is neither exercising jurisdiction not vested nor committing a manifest error of law.

5. What is meant by the words, "Is bona fide needed for his own personal occupation" is that the landlord has a genuine need for occupying the accommodation himself. It is not enough that he really means to occupy it himself; it must be necessary for him to occupy it and the necessity must be a bona fide or genuine one. When a landlord wants, what is popularly known as a

release order, in his favour, he may want it neither for keeping the accommodation vacant, or for giving it to a relation or friend as a licensee, or for occupying it himself. If he wants to keep it vacant or to give it to a friend or relation as a licensee it is not a case of his needing it for own personal occupation and Rule 6 will not apply. But, it does not follow that it will necessarily apply when he wants to occupy it himself. In addition to the intention to occupy it himself there must be genuine need for his occupying it. If there is no need for his occupying it, as for Instance, when another accommodation that he is occupying, is suitable and ample for his needs, it is not a case of his bona fide needing it for own occupation, even if he really means to occupy it himself.

Consequently, it cannot be said that a landlord bona fide needs an accommodation for own personal occupation, unless it is found that he wants to keep it vacant or want it to be occupied by another person, whether as a licensee or as a tenant. To say that Rule 6 is attracted whenever a landlord intends to occupy an accommodation himself, would be to Ignore the significance of the words "bona fide needed", used in Rule 6. It is not enough for the landlord merely to satisfy the District Magistrate that he intends to occupy the accommodation personally; he must also show that it has become necessary for him to occupy it. If he fails to make out a case of genuine necessity, he cannot claim the benefit of Rule 6. It is for the District Magistrate to be satisfied whether he really needs the accommodation for own occupation or not.

6. We were referred to *Gadadhar Frasad Sharma v. District Magistrate, Lucknow* 1956 All L. J 694 in which V.D. Bhargava J., observed at p. 695 :--

"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."

6A. With great respect to the learned Judge, it is difficult to agree that it is a case of a landlord's not bona fide needing an accommodation for own personal occupation only when he intends it to be occupied by somebody else. The learned Judge did not consider that it may be a case of want of bona fide need even when the intention of the landlord is that he will personally occupy it. There can be a case of the landlord's occupying an accommodation personally without any necessity or reason. He may occupy it not because it is necessary for him to occupy it, but simply to prevent his being ordered to let it to another person.

Sri G.S. Srivastava also referred us to *Sukh Swarup v. Rent Control and Eviction Officer: Special Appeal No. 247 of 1957 D/- 1-11-1957 (A11)* by Mootham C.J., and A.P. Srivastava, J. The learned Judges there held that if the District Magistrate's finding that the landlord did not bona fide need the accommodation for his own personal occupation was a finding of fact. It could not be interfered with by certiorari. But they also observed that.

"Unless he comes to the conclusion that the landlord does not require the accommodation for his own personal occupation, he is bound to hold that the landlord's need is bona fide within the meaning of the rule".

When they held that the District Magistrate's finding was one of fact, which could not be quashed by certiorari, they were not called upon to decide what amounted to a landlord's bona fide needing an accommodation for his own personal occupation. The latter observation made by them was, therefore, obiter. Moreover, when they used the word "require" they might have meant nothing else than "bona fide need." The word "require" suggests some need. Unless the landlord has some need for an accommodation, it cannot be said that he requires it.

Actually, the onus is upon the landlord to satisfy the District Magistrate about his bona fide need; it is not upon a claimant for tenancy to prove that the landlord has no bona fide need with great respect to the learned Judges, we cannot agree that if the claimant fails to prove that the landlord does not require the accommodation for his own personal occupation, it must be held that he has bona fide need for own personal occupation. What the landlord has to prove cannot be held to be proved because the other party fails to prove the contrary.

7. We hold that appellant No. 1 had failed to satisfy the District Magistrate that she bona fide needed the accommodation for her own personal occupation and could not claim the benefit of Rule 6.

8. The special appeal is dismissed summarily.