
(1977) 01 AHC CK 0002
In the Allahabad High Court
Case No : Writ Petition No. 731 of 1976

Iqbal Bahadur Vidyarthi

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 17-01-1977

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7(2)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 14, 16, 22
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 10, 11, 9(3)

Citation : (1977) AWC 272

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hari Swarup, J.—This petition is directed against the allotment order passed u/s 16 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (to be hereinafter referred to as the Act) and against the appellate order passed by the Additional District Judge passed u/s 22 of the Act. One Smt. Parbati Verma gave an application for allotment of an accommodation consisting of a room and a verandah in house No. 2 on the allegation that it had been vacated by the sitting tenant V.S. Pande. Subsequently she changed the number of the house and applied for allotment of the room in house No. 3. On this application, the Rent Control Inspector was directed by the Deputy Collector (Rent Control) to make an enquiry. The report was to be put up for orders on January 18, 1975. It appears that on report being submitted on January 7, the officer passed an order for the issue of notice to the landlord, the present Petitioner, and the applicant. The date fixed for appearance was 22-1-1975. The notice to the landlord appears to have been sent not under registered cover but under certificate of posting. That notice was not deemed sufficient and hence service was directed to be effected through the process server. The process

server filed his report stating that the Petitioner had read the notice and the report but had refused to accept the notice and thereafter it was affixed at the door of the house. On 5th March 1975 the officer fixed March 24, 1975 as the date for orders. He however passed the order on March 15, 1975 allotting the accommodation to the applicant Smt. Parbati Verma. The Petitioner landlord filed an appeal against this order but his appeal was dismissed.

2. The case of the Petitioner is that there was no vacancy as the accommodation in dispute was always in his occupation and the allegation that it was in the tenancy of one Vidya Shanker Pandey was false. The other contention of the Petitioner is that no notice intimating the vacancy and the proceedings for allotment was given to him as required by Sub-rule (3) of Rule 9 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (to be hereinafter referred to as the Rules) the alleged notice, a copy of which has been filed, was about regularisation of occupation, and even this notice, according to the Petitioner, was never served. He has challenged the correctness of the report of the process server. The other ground of attack is that the order could not be passed by the officer before the date fixed in the case. The Additional District Judge does not seem to have considered all the points raised by the Petitioner. No doubt, he has stated in the judgment that no other point was raised before him but an affidavit has been filed by the Petitioner stating that the points had in fact been raised and argued but he has failed to consider the points raised in the case. Although the first Additional District Judge was made a party in the case, he has filed no counter-affidavit in the case. The allegations in the counter-affidavit are also not specific in denying the statement of the Petitioner. The counter-affidavit has been filed by a person who does not understand English. The arguments, it is conceded at the Bar, were in English. Prima facie, therefore, it is not possible to say that the points were not raised. Even if they were not pressed, there is no bar to their not being entertained in this writ petition as they go to the root of the matter particularly when the judgment of the appellate court is liable to be quashed (sic) on the grounds that were considered by the appellate court. Learned Counsel for the Respondent contended that if points were raised and not considered the proper remedy for the Petitioner would be to apply for review and not to challenge the order through a writ petition. There is no specific provision for review and even if that were so, as the order of the Additional District Judge as well as of the Rent Control Officer are liable to be quashed even on the point considered by the Additional District Judge it will not be just and proper to throw out the petition on this ground.

3. There is an allegation in the petition that the process server's report is incorrect on the face of it because both the leaves of the notice are on record. If the statement of the process server was correct, atleast half of it would not have been on record because that should have been affixed at the door of the Petitioner's house. There is no specific denial of this fact. Although there is a general denial in the counter-affidavit of the allegation, but it is not stated in the counter-affidavit that on the record there is only one leaf and not both the

leaves. Prima facie, therefore, it appears that the notice was never served on the Petitioner landlord.

4. Even if it be deemed to have been served, a copy of the notice which has been filed as annexure 3 to the writ petition shows that the notice was not about the vacancy of any accommodation or its allotment but about regularisation of the accommodation. Although there is no specific provision in the Act about the proceedings for regularisation of occupation, there is Section 14 in the Act which speaks about regularisation of occupations by existing tenants if their tenancy was in contravention of Section 7(2) of the Act No. III of 1947 and the tenant was occupying the building with the consent of the landlord immediately before the commencement of the present Act. The landlord can, therefore at the most be deemed to have knowledge that proceedings about regularisation of the tenancy of his tenant was being taken. Smt. Parbati Verma was admittedly the tenant of house No. 3. There was thus nothing to require the landlord to object to. What is required by law is a notice intimating that the accommodation is vacant and is to be allotted for purposes of tenancy. Rule 9(3) provides:

Immediately after the receipt of intimation of vacancy of any building in the office of the District Magistrate, the vacancy shall be entered in a register which shall be maintained in that behalf and be notified for the information of the general public by pasting a copy of the list of the vacant buildings on the notice board of that office, specifying therein the date on which the question of allotment will be considered. He shall also issue a notice to the landlord intimating him the date so fixed. On the date so fixed the District Magistrate shall consider the cases of all applicants registered in the register mentioned in Rule 10 and shall pass an order u/s 16 in accordance with Rules 10 and 11.

The rule is clear about issuing the notice to the landlord intimating him the date fixed in the case on which the District Magistrate shall consider the matter about allotment of the vacant accommodation. Admittedly no notice was given intimating to the landlord that any building was vacant and its allotment will be considered by the District Magistrate. There is thus a clear violation of law. The law does not contemplate passing of allotment orders of vacant accommodations without notice to the landlord.

5. The next attack of the learned Counsel for the Petitioner is on the passing of the allotment order before the date fixed in the case. The order sheet of the case before the Rent Controller dated 5th March, 1975 shows that the case had been fixed for orders on 24-3-1975. As already seen, Rule 9(3) provides that on the date fixed the District Magistrate shall consider the question of allotment. Except for special reason and other notice to all concerned, the case should not have been decided on a date earlier than the date fixed in the case. A date is fixed in the case so that persons interested may appear and show cause and also to press their claims for allotment. It is a date which has to be fixed for hearing and consideration of the matter. By deciding the matter earlier than on the date fixed, every person is deprived of his right of hearing. It cannot therefore be

regarded as a mere irregularity but must be deemed to be an illegality vitiating the entire proceeding. In the present case, the officer concerned never notified that the case will be taken up on March 15, 1975 and not on March 24, 1975, He has thus exercised his jurisdiction not only with material irregularity but clearly with manifest illegality and the order cannot stand. The learned Additional District Judge was clearly in error in holding that the order could have been passed on March 15, 1975 even though the date fixed in the case was March 24, 1975.

6. Learned Counsel for the Respondent has however, contended that the date fixed in the case was 15th March and not 24th March. In support of his contention he has relied on the averment in the counter-affidavit to the effect that the case was directed to be fixed for orders on 15th March, 1975 so far as the deponent remembered. There is thus no clear averment, and is based only on the memory about which the deponent of the counter-affidavit is not sure. Further, even though the notice was served on the officer concerned, he has not come forward to state that the date fixed in the case was March 15th and not March 24. The order sheet a copy of which has been filed shows that the date fixed was 24th March. It must therefore be taken that the date fixed in the case was March 24, and in the absence of any reason for deciding the case prior to this date the order cannot be deemed to be passed in accordance with law.

7. The order of allotment in the circumstances mentioned above must be deemed to have been passed in total disregard of the procedure prescribed by law. The petition is accordingly allowed with costs. The order of allotment passed by the Deputy Collector (Rent Control) Lucknow dated 15th March, 1975 as well as the appellate order are quashed. The Rent Control and Eviction Officer will now proceed with the matter in accordance with law after serving on the landlord a proper notice as contemplated by Sub-rule (3) of Rule 9 of the Rules.