

(1978) 09 AHC CK 0010
In the Allahabad High Court
Case No : Civil Misc. Writ No. 160 of 1976

Jairaj Singh and Others

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 25-09-1978

Acts Referred:

Penal Code, 1860 (IPC) — Section 177
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16, 18
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 10, 10(1), 10(2), 7, 7(2)

Citation : (1979) AWC 18

Hon'ble Judges : K.C. Agrawal, J

Bench : Single Bench

Advocate : Bharat Ji Agarwal, for the Appellant; Janardan Sahai and S.C., for the Respondent

Final Decision : Allowed

Judgement

K.C. Agrawal, J.—Petitioners 1 and 2 are the owners of bungalow No. 110-B, Civil Lines Bareilly. Towards the south of the aforesaid Kothi, there were four residential quarters. One of them had been let out to one S.N. Verma, Provident Fund Inspector, Bareilly. In 1975 S.N. Verma was transferred from Bareilly. However before he vacated the premises, an application for allotment was filed by Ajai Kumar, Respondent 4, to the District Magistrate, Bareilly, for allotment of the said premises. On the said application, the District Magistrate made the following:

Please see I would like the house in question to be allotted to the applicant, whose need seems to be very genuine. Please report and take action.

2. It may be noted that the application itself was filed by Respondent 4 on that date. Along with the said endorsement, the application was sent to the Rent Control and Eviction Officer. On 7-11-1975, he directed the Rent Control and

Eviction Officer to notify the vacancy, if the premises was vacant. The Rent Control Inspector made an enquiry and submitted a report that S.N. Verma was in the process of leaving the quarter, and that the premises was vacant for the purposes of allotment. Consequent upon the aforesaid report, on 7-11-1975 the Rent Control and Eviction Officer notified the vacancy inviting applications for consideration on 13-11-1975. A notice of this proceeding was sent to the landlords, Petitioners 1 and 2 also. The Petitioners 1 and 2 appeared before the Rent Control and Eviction Officer and filed an objection. The objection was that as the premises was not covered by U.P. Act XIII of 1972, no proceedings for its allotment could be taken by the Rent Control and Eviction Officer.

3. It, however, appears that the applications for allotment were not disposed off on 13-11-1975, and the case was adjourned. After some adjournments, on 15-12-1975, the Rent Control and Eviction Officer finally made an allotment order in favour of Respondent 4. An intimation of the aforesaid order of allotment was, thereafter, given to Om Prakash, Petitioner 3, who was occupying the premises at that time. The intimation was received by him on 2-1-1976. Thereafter, the three Petitioners filed an appeal before the appellate authority. The appeal was dismissed by the impugned order dated 6-2-1976. Apart from the merits, the appellate authority also found that the appeal was incompetent and also that it was barred by time. Feeling aggrieved, the Petitioners filed the present writ petition.

4. The first point urged by Sri Bharat Ji Agrawal, counsel appearing for the Petitioners, was that the learned Additional District Judge committed an error in holding that the appeal filed by the Petitioners was incompetent because it was not accompanied by a certified copy of the order of allotment of the Rent Control and Eviction Officer. Rule 7(2) of the rules framed under U.P. Act XIII of 1972 provides that every memorandum of appeal shall be accompanied by a copy of the order sought to be appealed or revised. Sub-rule (4) of the aforesaid Rule 7 provides for a contingency where the filing of a certified copy of such an order may be dispensed with. It lays down that if an Appellant gives adequate reasons for not being able to file the certified copy of the order on an affidavit, the appellate authority could dispense with the filing of the same. In such an event, a copy filed along with an affidavit will be treated as correct.

5. In the instant case, the supplementary affidavit filed by the Petitioners shows that they had filed an uncertified copy of the order of allotment made by the Rent Control and Eviction Officer along with an affidavit and stated therein that as the Petitioners Were required to obtain a stay order by the 9th of January, 1975, it could not be possible for them to obtain a certified copy and to file it along with the memorandum of appeal. The learned Additional District Judge, however, held that since Rule 7(2) was mandatory, the omission to file a certified copy by the Petitioners along with the memorandum of appeal rendered the appeal Incompetent. Obviously, the learned Additional District Judge did not consider the affidavit which had been filed by the Petitioners along with the

memorandum of appeal giving the reasons due to which they were not able to file the certified copy. It may be true that Sub-rule (2) of Rule 7 should normally be complied with, but Rule 7(4) contemplates of special cases where the filing of a certified copy may be excused. In the present case, the appellate authority committed an error in rejecting the appeal on the ground indicated above without addressing himself to the affidavit which was filed by the Petitioners. In my opinion, the reasons given by the Petitioners in the affidavit for not filing certified copy of the judgment were adequate, and that the learned Additional District Judge should not have dismissed the appeal on the ground stated above.

6. The learned Additional District Judge also held that the appeal filed by the Petitioners was barred by time and hence he dismissed the appeal. Section 18 of U.P. Act XIII of 1972, as it stood at the relevant time, provided that a person aggrieved by an order u/s 16 could file an appeal within fifteen days from the date of the order. The Petitioners claimed that as the allotment order was communicated to Om Prakash, Petitioner 3, on 2nd of January, 1976, the appeal filed by them on 6th January, 1976, was within time. The learned Additional District Judge, however, did not accept the submission of the Petitioners on two grounds. The first was that the benefit of communication of the allotment order could be taken by Om Prakash Petitioner 3, alone and not by Petitioners 1 and 2. The learned Additional District Judge while holding that the Petitioners 1 and 2 were not entitled to the benefit of the date of communication received by Petitioner 3, held that Petitioners 1 and 2 already had notice of the proceedings for allotment. This was the record(?) reason.

7. In my opinion, both the grounds given by the learned Additional District Judge are manifestly erroneous. The Petitioners had jointly preferred the appeal and if Om Prakash was entitled to get the benefit of the communication of the order to him, there was no reason to hold that the memorandum of appeal presented by him along with Petitioners 1 and 2 was liable to be rejected on the ground of limitation. Admittedly, Om Prakash acquired knowledge of the order on 2nd January, 1976. It is now settled that the limitation for filing an appeal runs from the date of knowledge of the order and not from the date of its passing, if a person against whom an order is passed was not a party to the proceeding.

8. Interpreting the expression "date of order," the Supreme Court in *Madan Lal Vs. State of U.P. and Others*, , held that the limitation for filing an appeal runs from the date of the knowledge of the order and not from the date on which the order itself was made. In taking this view, the Supreme Court had followed its earlier decision in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, .

9. That apart, it was also incorrect to say that Petitioners 1 and 2 had knowledge of the allotment proceedings. It is no doubt true that notices were sent to the aforesaid Petitioners about the allotment proceedings, and that these Petitioners had also filed an objection to the same. But, subsequent to the filing of the aforesaid objection, the hearing of the allotment applications was adjourned and

thereafter Petitioners 1 and 2 were not informed of 15th December, 1975, on which date the allotment order was passed in favour of Respondent 4. In this view of the matter, the learned Additional District Judge should have held that the limitation as against the Petitioners 1 and 2 started running from 2nd January, 1976, and not from before. Even if it be assumed that the appeal of Petitioners 1 and 2 was barred by time, but as the appeal of Petitioner 3 was within time, the same could not have been dismissed on that ground.

10. Next comes the question about the validity of the allotment order. Rule 10 of the rules framed under U.P. Act XIII of 1972 lays down that an application for allotment shall be made in Form A. Sub-rule (2) dispenses with the requirement of filing an application in the prescribed form in certain cases. It provides that in the case of need for government office or for a government servant, a letter of the Head of the Department shall be sufficient. The use of the words "shall be made in Form A" are indicative of its mandatory character. If the words used in Rule 10(1) would have been that an application should be in accordance with Form A, the consequence would have been different. But where, as here, the words are "shall be made in Form A", strict compliance is necessary. The filing of the application further appears to be imperative due to the declaration which is required to be given by the applicant at the end. It incorporates an undertaking of the applicant for allotment that if the particulars given are disclosed to be incorrect, not only the allotment shall stand cancelled but he would also be liable to punishment u/s 177 IPC. There are various other details which have to be considered at the time of disposal of the applications for allotment. In case the application is not made in Form A, it is liable to be rejected. Where a statute lays down that a particular thing shall be done in a particular manner or form but does not deal with the consequences of non-compliance, the question shall be differently treated. In the instant case, however, the form prescribed is essential. To accept that an application for allotment need not be in Form A, even in cases not covered by Rule 10(2) would amount to enlarge its scope. If the intention would have been to treat the requirements directory, Rule 10(1) would have been differently worded.

11. However, whether the omission to give the application for allotment in the prescribed form would invalidate the allotment order and would afford a ground for interference, need not be gone into in the present case inasmuch as the allotment order is liable to be set aside on another basis. The same being that the allotment was made in favour of Respondent 4 on the direction of the District Magistrate. The facts would show that the Rent Control and Eviction Officer complied with the formality of taking the proceedings only for the purposes of show. The Rent Control and Eviction Officer did not apply his independent mind in making the order. Admittedly a direction had been issued by the D.M. on 7-11-1975 that the premises be allotted to Respondent 4. The Rent Control and Eviction Officer was greatly influenced by the direction of the District Magistrate and allotted the premises to the said Respondent. The District Magistrate was not justified in giving a direction to the Rent Control and Eviction Officer.

12. In view of the above, the writ petition succeeds and is allowed. The order of the learned Additional District Judge dated 6th February, 1976, and that of the Rent Control and Eviction Officer dated 15-12-1975 are quashed. In the circumstances, I direct the parties to bear their own costs.