
(1957) 01 AHC CK 0004

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 205 of 1956

J.V. Dass

APPELLANT

Vs

The District Magistrate of Kanpur and Others

RESPONDENT

Date of Decision : 29-01-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1957) 27 AWR 240

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : S.N. Misra, for the Appellant; D. Sanyal and S.C., for the Respondent

Final Decision : Allowed

Judgement

Mehrotra, J.—This is a petition under Article 226 of the Constitution praying that the order of allotment passed in favour of the opposite party No. 3 be quashed and that the order of the Commissioner in revision against that order be also quashed.

2. The opposite party No. 4 is the owner of premises No. 7/114 Swarupnagar, Kanpur. The Petitioner alleges that he has been in possession of this premises as a tenant for the last 20 years on the ground-floor and he continued to occupy that portion continuously without break. On being given out that the house was vacated to the Rent Control and Eviction Officer who on that representation allotted the accommodation under the tenancy of the Petitioner on the ground-floor of premises No. 7/114, to Sri Faqir Chand Srivastava on 20-10-1953. A writ petition was filed by the Petitioner in this Court as the allotment, according to the Petitioner, was made without the premises being vacant. During the pendency of the writ petition some other premises were allotted to Sri Faqir Chand Srivastava and he wrote to this Court on 11-2-1955 that he no longer needed the accommodation and he was not therefore willing to contest the writ petition. On 15-3-1955 however the petition was rejected on the ground that the remedy of the Petitioner was to go up in revision to the Commissioner. Certain other

observations were also made by this Court in the course of that order which will be considered at the proper time. After the decision in the previous writ petition the landlord approached the District Magistrate again and the Rent Control and Eviction Officer allotted this premises on 1-6-1955 to one Sri S.P. Pandey opposite party No. 3 to this petition. The landlord also filed a suit against the Petitioner treating him a tenant up to 30-9-1953 and thereafter as a trespasser for the recovery of certain amount as damages for use and occupation for the period during which he was treated as a trespasser. When the Petitioner came to know that the Rent Control and Eviction Officer was going to allot the premises he filed a petition before the Rent Control and Eviction Officer intimating him that he had been in continuous occupation of the house and the premises had never fallen vacant. The Petitioner's contention is that the order of allotment was received by post on 7-10-1955. On 10-6-1955 the Rent Control and Eviction Officer sent a notice to the Petitioner directing him to appear on 18-6-1955. The Petitioner complains that this notice was not served on the Petitioner till 13-6-1955. He however filed an application for giving him time for producing documentary evidence. The objection to the allotment had already been filed on 13-6-1955. The Rent Control and Eviction Officer fixed 28-6-1955 for the hearing of the objections; but the landlord applied to the District Magistrate for a direction that possession will be given to the allottee soon as the present Petitioner was likely to obtain an injunction from the civil court. The District Magistrate on 14-6-1955 directed the Rent Control and Eviction Officer to see that possession was delivered to the allottee expeditiously. The Rent Control and Eviction Officer had ordered the matter to be fixed on 24-6-1955. The District Magistrate however on an earlier date asked for a report from the Rent Control and Eviction Officer as to why he was delaying police possession in the matter. On 26-5-1955 the file was sent to the District Magistrate by the Rent Control and Eviction Officer with his note. The District Magistrate ordered on 21-6-1955 that the objections should have been summarily decided as the objections to the allotment had already been considered. He however directed that the objections may be heard on 24-6-1955. On 25-6-1955 the Rent Control and Eviction Officer then passed the order that the parties were present before him and a similar objection filed by the Petitioner was before the District Magistrate when the question of allotment was being considered. After considering the objections the District Magistrate passed orders of allotment in favour of Sri S.P. Pandey holding that the premises were vacant for purposes of allotment. These objections therefore cannot be entertained afresh and were rejected. He directed that possession be delivered to the allottee by vacating the premises by 28-6-1955. It was further provided in the order that it was to be deemed sufficient notice u/s 7A(2) by the objector and was to be complied with. In case he failed to comply within that time the file was to be put up before the committee for action u/s 7A(3). Against this order a revision was filed before the Commissioner and it was dismissed on 4-2-1956. The Petitioner by means of this application under Article 226 of the Constitution has challenged the order of the Commissioner and the allotment order made in favour of Sri S.P. Pandey.

3. It appears that after the revision was filed to the Commissioner against the order of the Rent Control and Eviction Officer which was passed u/s 7A(2) another order was passed by him u/s 7A(3) and the Commissioner entertained revision against that order also and disposed of both the revisions on 4-2-1956.

4. Notices were issued to the opposite parties. Counter-affidavits have been filed by the landlord opposite party No. 4 and the State. In the counter-affidavit filed on behalf of the opposite party No. 4 it is stated that when the Petitioner came up under Article 226 of the Constitution to this Court against the earlier order of allotment in favour of Sri Faqir Chand Srivastava this Court made the following observations in the judgment:

It may, however, be pointed out that Shri Faqir Chand Srivastava, allottee, has been given another house and he is no longer desirous of occupying this house. The result, therefore, is that even if it be taken for granted that the Petitioner's right to remain in occupation of the house has finally terminated, there is a case of fresh vacancy and the Petitioner can apply again to the Rent Control and Eviction Officer for allotment. Such an application, if made, will be considered by the Rent Control and Eviction Officer along with other applications, if any.

5. Fresh applications were invited by the Rent Control and Eviction Officer for allotment and the allotment was made in favour of Sri S.P. Pandey. According to the opposite party No. 4 the Petitioner had left on 18-10-1953 for Gorakhpur and had permitted one Sri Massey to continue to live in that house. Sri Massey remained in that house till 18-12-1954. The Petitioner had left permanently for Gorakhpur and had abandoned the premises. The premises had been allotted to Sri Faqir Chand Srivastava on 22-10-1953. In the counter-affidavit it is admitted that in the suit filed by the opposite party No. 4 the Petitioner had been treated as a tenant till 30-9-1953 and asserted that he became a trespasser from 1-10-1953. It is contended that the Petitioner is not entitled to any relief.

6. Two main contentions have been raised by the Petitioner. Firstly, it is contended by him that the allotment made in favour of Sri S.P. Pandey is without jurisdiction inasmuch as on that date the tenancy of the Petitioner had neither terminated nor had he in fact abandoned possession of the premises. Secondly, it was contended that the Rent Control and Eviction Officer passed an order u/s 7A(2) and (3) without considering the objections raised by the Petitioner on merits solely on the ground that the allotment had been made by the District Magistrate after consideration of the objections raised by him and on a finding that the premises were vacant on that day. This order is illegal. u/s 7A it is the Rent Control and Eviction Officer who had got to be satisfied whether the possession was in contravention of an order passed u/s 7(2). It is not open to him to act in accordance with the implied finding of the District Magistrate about the actual vacancy of the premises at the time of allotment.

7. I shall deal first with the second point urged by the Petitioner. From the order passed by the Rent Control and Eviction Officer by which the Petitioner has been

directed to be dispossessed by the police help it is clear that the Rent Control and Eviction Officer did not apply his independent mind to the question as he has held that the objection filed by the Petitioner was not maintainable inasmuch as the District Magistrate at the time of allotment had before him the objection filed by the Petitioner and by allotting the premises to Sri S.P. Pandey he had held that the premises were vacant. Section 7A gives power to the District Magistrate and in case the powers have been delegated to the Rent Control and Eviction Officer the Rent Control and Eviction Officer to order ejectment of a person who is in occupation in contravention of an order of allotment made by him. In considering that matter the Rent Control and Eviction Officer is authorised to go into the question of the validity of the order of allotment. The Rent Control and Eviction Officer has to apply his own mind and to act according to his own decision and not to substitute the decision of the District Magistrate for his own decision. There is therefore force in this contention of the Petitioner that the order passed by the Rent Control and Eviction Officer was illegal inasmuch as he did not apply his mind to the question which was necessary for determination u/s 7A.

8. Coming to the first point raised by the Petitioner that the order of allotment was illegal inasmuch as there was no vacancy on the date when the premises were allotted. It has been strenuously contended by the counsel for the other side that the order of this Court in the earlier writ petition filed by the present Petitioner has clearly implies finding by this Court that the premises were vacant. I have already referred to the observations made by this Court and in my opinion this Court has not decided in the earlier writ petition that the premises were vacant on the date when the allotment was made in favour of Sri Faqir Chand Srivastava or Sri S.P. Pandey. The earlier writ petition was rejected on the ground that the Petitioner had an alternative remedy available to him and having failed to avail that by means of a revision before the Commissioner the writ petition was not maintainable, the observations referred to do not mean that this Court had come to a finding that the house had been vacated by the Petitioner. It has only held that even if it be accepted that the Petitioner's right to the main occupation had come to an end it was open to the Petitioner to apply along with others for the allotment of the premises now when Sri Faqir Chand Srivastava was not going to occupy this house under the allotment order. The order of this Court is therefore no bar to the Petitioner contending before the Rent Control and Eviction Officer that he never abandoned his possession nor was there any termination of his tenancy and consequently the house was not available for fresh allotment. According to the facts alleged by the opposite party No. 4 it is clear that the Petitioner continued to be a tenant of the premises till 30-9-1953. He left the premises on 18-10-1953. The allotment was made in favour of Sri Faqir Chand Srivastava on 22-10-1953. Thereafter that order was challenged by means of a writ petition in this Court. It is therefore clear from the facts admitted by the landlord himself that at no point of time the Petitioner expressed his intention to give up his possession or to put an end to his tenancy of the

disputed house. The actual physical possession of the Petitioner was also never disturbed. It was contended that the Petitioner had gone away to Gorakhpur and had allowed his relation Mr. Massey to occupy the premises. Mr. Massey even on admitted facts is only occupying it as a licensee on behalf of the Petitioner and it cannot be said that the Petitioner's possession has ceased. The opposite party No. 4 himself brought a suit for recovery of certain damages for use and occupation of the premises by the Petitioner with effect from 1-10-1953. In the eye of law he treated the present Petitioner as a trespasser but nonetheless the suit itself is an admission on the part of the opposite party No. 4 that the present Petitioner continued to be in actual possession of the premises. On the admitted facts therefore and on the admission made by the opposite party No. 4 himself the Petitioner neither ever ceased to be out of actual physical possession nor his tenancy can be said to have terminated in the eye of law. In these circumstances there was no vacancy and the house was not available for fresh allotment on the date when the allotment was made in favour of the opposite party No. 3. The allotment order in my judgment is therefore illegal and without jurisdiction.

9. I therefore allow this petition and quash the order of allotment in favour of the opposite party No. 3 and also subsequent proceedings u/s 7A of the Rent Control and Eviction Act. The parties will bear their own costs.