

(1955) 11 AHC CK 0001
In the Allahabad High Court
Case No : Special Appeal No. 30 of 1955

Lal Triloki Nath

APPELLANT

Vs

Sri S.D. Varma and Others

RESPONDENT

Date of Decision : 28-11-1955

Acts Referred:

Citation : (1956) 26 AWR 134

Hon'ble Judges : Mootham, C.J;Agarwala, J

Bench : Division Bench

Advocate : P.N. Shukla, for the Appellant; G. Kumar and S.C., for the Respondent

Final Decision : Allowed

Judgement

Agarwala, J.—This is a special appeal against an order of a learned single Judge of this Court dismissing a writ petition. The facts, briefly stated, are as follows:

The Appellant and his father and brothers reside in a joint family bungalow known as Rose Bank situated at Kanpur. The Appellant had another house No. 7/61 situated in Tilak Nagar, Kanpur, which was his own personal property. This latter house had been let out to two tenants one of whom was Sri D.R. Gambhir an employee of the Imperial Bank, Kanpur, and the other was Sri Badri Nath Sekhari a local business man of Kanpur. The Appellant's case was that there was a partition amongst the members of the Appellant's family with the result that the Appellant was not allotted any share in the bungalow known as Rose Bank and in lieu of his share he was given some cash compensation, and as such he was to vacate the portion occupied by him. He applied to the Rent Control and Eviction Officer for permission to sue the tenants of house No. 7/61 for their eviction, as he wanted the house for his own residence. This application was made on the 3rd January 1953, but remained pending for some time. In the month of February of the same year Sri D.R. Gambhir was put under orders of transfer from Kanpur to some other place, and on 18th February, 1953 the Agent of the Imperial Bank, Kanpur, wrote a letter to the Rent Control and Eviction

Officer requesting him that on account of Sri Gambhir, the then occupant of the premises, being under orders of transfer, the premises may be allotted to Sri S.D. Varma, another employee of the Bank when Sri Gambhir vacates the same. The Rent Control and Eviction Officer replied that he would allot the house to a bank employee as the premises had been in occupation of one or another of the bank employee since July, 1950.

2. On the 13th April, 1953 Sri D.R. Gambhir informed the Rent Control and Eviction Officer that he had been transferred and that the house had been vacated by him on that date. On the same date the Agent, Imperial Bank, wrote to the Rent Control and Eviction Officer asking him to allot the house to the Respondent Sri S.D. Verma as had been promised by him in his previous letter.

3. On the same date the landlord also made an application to the Rent Control and Eviction Officer for allotment of the house to him on the ground that he needed it for his own residence because he had to vacate the Rose Bank and that he was not going to let it out to anybody else.

4. The Rent Control and Eviction Officer passed two orders on the same date, one on the letter of the Agent, Imperial Bank, and the other on the landlord's application. On the letter of the Agent, Imperial Bank, he passed an order as follows:

In view of my letter dated 18th February, 1953 it is desirable that this house should be allotted to a bank employee. Let (sic) be allotted to Sri S.D. Varma. Landlord's application rejected. Allotment order to issue accordingly.

5. On the landlord's application the order was:

The house will not be given to any one else except a bank employee. It cannot be allotted.

6. Thereupon the Appellant filed the writ petition which has given rise to this appeal in this Court on the 1st of May, 1953 praying that the order of the Rent Control and Eviction Officer be quashed and a writ of mandamus be issued directing the Rent Control and Eviction Officer to consider the petition for allotment of the Appellant on the merits. The grounds for the relief prayed for were that the Rent Control and Eviction Officer's order was arbitrary and in violation of Rule 6 framed under the Control of Rent and Eviction Act and that the Rent Control and Eviction Officer did not apply his mind to the Petitioner's application at all but was influenced by the private correspondence that had passed between the Agent of the Bank and himself behind the back of the Appellant.

7. The Rent Control and Eviction Officer did not file any counter affidavit in answer to the affidavit filed by the Appellant before the learned single Judge. The opposite party No. 1 Sri S.D. Varma did file a counter affidavit. He did not specifically deny that the Appellant needed the house for his own occupation, though he stated that the Appellant had intended to sell the house to some

persons and give them vacant possession. No details of this allegation were mentioned. In the counter affidavit filed by the Respondent it was also stated that the landlord wanted to increase the rent. All these allegations were denied by the Appellant in his rejoinder affidavit, and it was further stated that Sri S.D. Varma was living comfortably in another house and that he had never applied for the allotment of the bungalow in question.

8. The learned single Judge rejected the writ petition on the ground that the Rent Control and Eviction Officer must be deemed to have considered the landlord's application and to have rejected it after such consideration, and that for that reason the reliefs prayed for by the Appellant could not be granted.

9. In this special appeal learned Counsel for the Appellant has urged that from the facts apparent on the record it is quite obvious that the Rent Control and Eviction Officer did not do what Rule 6 of the rules framed under the Control of Rent and Eviction Act directed him to do, namely to find out whether the accommodation was bona fide needed by the Appellant or not. He further contended that the Rent Control and Eviction Officer was guided entirely by consideration which were not relevant to the consideration of the matter under Rule 6.

10. On behalf of the Rent Control and Eviction Officer permission has been sought to file an affidavit in this appeal. We did not however think that there was any sufficient reason to allow fresh evidence to be admitted in appeal. There was no reason why an affidavit now sought to be filed could not have been filed before the learned single Judge before whom the case remained pending for a sufficiently long time.

11. Upon the facts stated above it is obvious that the Rent Control and Eviction Officer did not take into consideration Rule 6 of the rules framed under the Control of Rent and Eviction Act. This rule runs as follows:

When the District Magistrate is satisfied that an accommodation which has fallen vacant or is likely to fall vacant is bonafide needed by the landlord for his own personal occupation the District Magistrate may permit the landlord to occupy it himself.

12. When it is brought to the notice of the District Magistrate that an accommodation which has fallen vacant or is likely to fall vacant is required by the landlord for his own personal occupation it is the duty of the District Magistrate to satisfy himself whether such is really the case, or in other words, whether the landlord does bona fide require the accommodation for his own occupation. If he comes to the conclusion that the landlord does bona fide require the accommodation for his own personal occupation it is his duty ordinarily to make the allotment in his favour, because as the owner of the house he has preference over every one else. Before he made the allotment order in favour of opposite party No. 1 the Rent Control and Eviction Officer ought to have considered the needs of the Appellant. He should have entered into an

enquiry whether the accommodation was bona fide needed by the Appellant for himself. This was not done by the Rent Control and Eviction Officer. The consideration that at some previous time he had written a letter to the Agent of the Imperial Bank that the house would be allotted to a bank employee should not have weighed with him in considering whether the house was indeed required by the landlord himself for his occupation. It appears to us that in the present case the Rent Control and Eviction Officer misdirected himself.

13. We therefore quash the order of allotment dated the 13th April, 1953 as also the order rejecting the landlord's application. The Rent Control and Eviction Officer is directed to reconsider de novo the applications of the landlord as well as of the Agent, Imperial Bank, upon their merits in the light of the observations made by us above. The Appellant will have his costs both of the proceedings before the learned single Judge as also before us from the Respondent No. 1.