
(1965) 08 AHC CK 0049
In the Allahabad High Court
Case No : G.M. Writ No. 1371 of 1963

Mangli Prasad

APPELLANT

Vs

The Additional Commissioner, Allsthabad Division, Allahabad
and others

RESPONDENT

Date of Decision : 19-08-1965

Acts Referred:

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

Citation : (1965) 35 AWR 602

Hon'ble Judges : S.G. Manchanda, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.G. Manchanda, J.—This is a writ petition Under Article 226 of the Constitution by the landlord challenging the order of the Commissioner in revision dated 28.1. 1963 holding that the provisions of Rule 7 were not mandatory and that the order suffers from a patent illegality inasmuch as the provisions of Rule 7 have been interpreted to be only directory and not mandatory.

2. The rule is clear that the District Magistrate shall before making the allotment order consult the owner and shall as far as possible make the allotment in accordance with the wishes of the owner. What is mandatory is the consultation with the owner. If no consultation has taken place then such an order would be an illegal order and liable to be quashed. It has been laid down by this Court in Ram Gopal v. State of U.P. (1) (1933 AWR 37) and Bankey Behari Lal v. RC and EO (2) (1956 AWR 547) that the provisions of Rule 7 are mandatory. There is no counter-affidavit or opposition to this petition by any party. The order of the Commissioner shows that the fact that the owner was in occupation of a part of the accommodation was not in dispute. That being an admitted fact, the provisions of Rule 7 made it obligatory) on the District Magistrate to consult the landlord. Mere hearing the landlord on his application for release of the premises

cannot by any stretch of imagination be considered to be consultation with the landlord.

3. For the reasons given above, the order of the Commissioner dated 28. 1. 1963 and the notice u/s 7-A (in dated 24. 7. 1962 are hereby quashed There will however be no order as to costs.