
(1971) 04 AHC CK 0015
In the Allahabad High Court
Case No : Special Appeal No. 649 of 1969

Masood Ahmad

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 01-04-1971

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7, 7F
Uttar Pradesh (Temporary) Control of Rent and Eviction Rules, 1949 — Rule 6

Citation : AIR 1971 All 544 : (1971) 41 AWR 336

Hon'ble Judges : V.G. Oak, C.J.; R.B. Misra, J

Bench : Division Bench

Advocate : Amar Nath Kaul, G.N. Kunzru and R.D. Upadhyaya, for the Appellant;
M.P. Mehrotra, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Oak, C.J.—This Special Appeal arises out of proceedings under the U. P. (Temporary) Control of Rent and Eviction Act. The dispute relates to a certain shop at Kanpur. Rama Shankar Agarwal, respondent No. 3, is the proprietor of the shop. At one time one Arif Husain occupied the shop as Rama Shankar's tenant. In July 1967 he transferred his business and goodwill in favour of Masood Ahmad, who is the appellant in this Special Appeal. Arif Husain died on 10-7-1967. Upon Arif Husain's death, the shop was occupied by Masood Ahmad. He applied for allotment of the shop in his name. On 21-10-1967 the Rent Control and Eviction Officer, Kanpur allotted the shop to Masood Ahmad.

2. Rama Shankar Agarwal (landlord) went up in revision u/s 7-F of the Act. The revision was allowed by the State Government on 12.3.1968. The order of allotment in Masood Ahmad's favour was set aside; and the accommodation was released in favour of the landlord.

3. Masood Ahmad filed a writ petition challenging the order passed by the State Government in revision on 12.3.1968. The writ petition has been dismissed by a Single Judge of this Court. Masood Ahmad has filed the present Special Appeal.

4. We have seen that Masood Ahmad had applied for allotment of the shop in his favour. The landlord also applied for release of the shop in his favour. That application bears the date 24.8.1967. The Rent Control and Eviction Officer, Kanpur, took the view that that application for release was received long after the allotment order was passed in Masood Ahmad's name. The officer reported that the application for release was not received in his office till 13.12.1967. According to the landlord, the application for release was despatched on 24.8-1967. On the other hand, according to the appellant and respondent No. 2, the application for release was not received in the office of respondent No. 2 till 13.12. 1967. The question, therefore, arises whether the application for release was despatched by the landlord in August 1967 as contended by him or in December, 1967 as urged by the appellant.

5. On the one hand, the application bears the date 24-8-1967. The landlord filed a counter-affidavit. In paragraph 21 of the counter-affidavit it was stated that the deponent sent the application for release dated 24-8-1967 by post on that very date. If that allegation is correct, that application should have reached the office or respondent No. 2 sometime in August 1967. On the other hand, respondent No. 2 reported that that application was not received in his office till 13.12.1967. Whether the application for release was despatched in August or in December, is a question of fact. It is not convenient to resolve that conflict in the present summary proceeding.

6. Annexure F-I to the writ petition is a copy of the impugned order passed by the State Government. During the course of that order it was observed: --

"It appears that the petitioner's release application dated 24th August, 1967 was not considered by the Rent Control and Eviction Officer as it should have been."

That observation in Annexure F-I suggests that it was possible for respondent No. 2 to consider the landlord's application for release in October 1967.

7. Even if it is assumed that the landlord's application for release was not received by respondent No. 2 till December 1967, that would not preclude the State Government from considering the landlord's request for release when the matter was taken up by the State Government on 12-3-1968. In "Smt. Ira Mittra v. A. K. Mandhyan" 1968 All LJ 434 it was held that the Rent Control and Eviction Officer had full jurisdiction to entertain and consider the landlord's application for release under Rule 6, even though that application was presented after proceedings had been started against her u/s 7-A of the Act.

8. In exercising its power of revision the State Government can exercise all the powers of the District Magistrate u/s 7 of the Act. It was, therefore, open to the State Government to consider the landlord's request for release even if there was some delay in moving the application for release.

9. Mr. Gopi Nath Kunzru, appearing for the appellant, urged that the appellant's occupation became regular after the date of allotment dated 21-10-1967. The

State Government criticized the appellant for his irregular occupation prior to 21-10-1967. It may be that the appellant's occupation after 21-10-1967 was in order. But that does not alter the fact that the occupation prior to 21-10-1967 was irregular. It was open to the State Government to consider all these circumstances at the time of disposal of the revision filed by the landlord.

10. The main contention of Mr. Kunzru is that the present case is not covered by Rule 6 framed under the Act. Rule 6 provides for occupation by landlord. Rule 6 states:--

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

11. Annexure R to the writ petition is a copy of the landlord's application for release. In that application the landlord suggested that the shop was needed for his personal use and for constructing a cinema hall and a market. In the order passed by the State Government on 12-3-1968 there was no finding that the shop was needed by the landlord for his personal occupation. The order, Annexure F-1, concluded thus:--

"The order of allotment is, therefore, set aside and the accommodation in dispute released to the landlord applicant for reconstruction."

12. In "Brij Ratan Lal v. Rent Control and Eviction Officer" 1964 All WR 325 it was held that providing lodging to customers by a businessman would not fall within the purview of Rule 6.

13. In " Girja Debi and Another Vs. The Rent Control and Eviction Officer and Others, it was held that what is meant by the words, "is bona fide needed for his own personal occupation" is that the landlord has a genuine need for occupying the accommodation himself. It is not enough that he really means to occupy it himself; it must be necessary for him to occupy it and the necessity must be a bona fide or genuine one.

14. These decisions explain the scope of Rule 6. These decisions do not lay down that it is impossible for a landlord to obtain a release order if the case is not covered by Rule 6.

15. In Ramnikal Pitambardas Mehta Vs. Indradaman Amratlal Sheth, , it was held that occupation of the premises does not necessarily refer to occupation as residence. The owner can occupy a place by making use of it in any manner. In that case the Supreme Court was considering a provision in Bombay Rents, Hotel and Lodging House Rates Control Act of 1947. But that decision is of considerable assistance in interpreting the corresponding provision in the U. P. Act.

16. We must remember that Rule 6 has been framed under the Act. The rule could not limit the provision of Section 7 of the Act, which provides for control of

letting. According Sub-section (2) of Section 7 of the Act, the District Magistrate may direct a landlord to let or not to let any accommodation. The wide power conferred by Section 7 of the Act on the District Magistrate cannot be limited by Rule 6. We can, therefore, conceive of cases of release, which are not within the four corners of Rule 6.

17. Mr. Kunzru further contended that the powers u/s 7 and under Rule 6 have been conferred on the District Magistrate. They make no reference to the State Government. But u/s 7-F of the Act, orders passed by the District Magistrate u/s 7 are open to revision by the State Government. Consequently, the State Government can exercise all the powers of the District Magistrate u/s 7 and Rule 6.

18. Annexure "C" to the writ petition is a copy of the landlord's application in revision. In Paragraph 3 of that application it was stated that the building as a whole is very old, and is not in proper condition. The two shops adjoining the shop in question were in a dilapidated condition without a roof. The whole building needed demolition and complete re-construction. Apparently, the State Government was satisfied on this point. The shop was, therefore, released in landlord's favour for reconstruction. That is a purpose, which is covered by Section 7 of the Act. There was nothing illegal in releasing the shop in favour of the landlord for purposes of reconstruction. The writ petition was rightly dismissed.

19. The Special Appeal is dismissed with costs to respondent No. 3.