

(1958) 09 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3640 of 1956

Mohammed Ishaq

APPELLANT

Vs

Rent Control and Eviction Officer, Saharanpur and Others

RESPONDENT

Date of Decision : 12-09-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7

Citation : AIR 1959 All 580 : (1959) 29 AWR 214

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : M.H. Beg, for the Appellant; B.R. Avasthi, for Opposite parties 2 and 3, Lakshmi Saran, for Opposite parties 1 and 4, for the Respondent

Final Decision : Allowed

Judgement

S.S. Dhavan, J.—This is a petition under Article 226 of the Constitution praying for the quashing of an order passed by the Rent Control and Eviction Officer, Saharanpur, respondent No. 1 dated 10-9-56 cancelling a previous allotment order made by him in favour of the petitioner. There is a further prayer for a writ of mandamus restraining the Rent Control and Eviction Officer from enforcing his order of 9th September or ejecting the petitioner from the shop allotted to him. The facts, as stated in the petitioner's affidavit, are these: He is a tenant in possession of shop No. 15/2990 in Saharanpur.

It is jointly owned by Haji Mohammed Akhtar and Mohammed Athar, respondents 2 and 3. This shop was previously in the tenancy of one Dr. Mangal Sen. He discontinued his tenancy. The petitioner came to know of this fact and made an application for allotment of the shop to himself. The Rent Control and Eviction Officer allotted the shop to him by his order dated 27-4-1956. The petitioner obtained possession of the shop in May, 1956, (from the record it appears that on 3-5-1956 he informed the Rent Control and Eviction Officer that he had occupied the shop. This letter was received by that Officer on 4th May).

Subsequently, the landlord made a complaint that the petitioner had obtained the allotment order by fraud.

But the petitioner was given no opportunity of meeting these allegations. On one occasion the Rent Control and Eviction Officer sent for the petitioner and put him a number of questions. These are related in detail in paragraph 6 of the affidavit. He was asked whether the furniture in the shop belonged to him. The petitioner replied that he had bought it from Dr. Sen, the out-going tenant. The petitioner then showed to the Rent Control and Eviction Officer his stock of glass bangles.

On another date that Officer asked the petitioner whether he had paid any pugri money. The petitioner denied this. He was also asked who had given him the key of the shop and he replied that he had received it from the landlord. The petitioner states that this was the only "enquiry" held, as far as he was concerned. His grievance is that he was given no opportunity to meet any case of fraud or collusion or mis-representation. He was not even informed or given particulars of the specific acts of conduct constituting the offences imputed to him.

In September, 1956, the petitioner received the impugned order cancelling his allotment. He learnt from this order that some one had informed the Rent Control and Eviction Officer that the petitioner had some other shop. If that Officer had given him any opportunity he would have explained to him that he was mis-informed and that he had no other shop. In paragraphs 9 and 10 the petitioner explains that, having no shop of his own, he had made some kind of an informal arrangement with a man called Noor Hassan to allow him to sit in his (Noor Hassan's) shop.

His relations with Noor Hassan were not happy as the latter was always taking advantage of the fact that the petitioner had nowhere to go. This compelled him to seek an allotment of some shop in his own name. He would have brought all these facts to the notice of the Rent Control and Eviction Officer if he had been given an opportunity.

2. Aggrieved by the order cancelling the previous allotment the petitioner has come to this court under Article 226 of the Constitution and prays for the reliefs mentioned above.

3. The petition is opposed both by the Rent Control and Eviction Officer and by the landlords and Counter-affidavits have been filed by both sets of respondents. The landlords allege that the petitioner obtained an allotment order fraudulently and in collusion with the previous tenant Dr. Mangal Sen. They further state that no intimation of vacancy had been given either by the landlords or by the tenant to the Rent Control and Eviction Officer. The petitioner went to the Rent Control and Eviction Officer with an application alleging that the tenant did not wish to continue his tenancy and that it had been vacated by him.

This was a false statement. On its basis the shop was allotted to him. When the

landlord came to know of this fact, they made an application dated 5-5-1956, before the Rent Control and Eviction Officer giving the correct facts and stating that Dr. Mangal Sen had vacated the shop nor handed over the key to the landlord. Thereafter the Rent Control Eviction Officer sent notice of the application to the petitioner. He also examined the petitioner's witnesses, heard arguments of both the parties at length inspected the shop in the presence of the parties and found that the medicines and furniture of Dr. Mangal Sen was still lying about in the shop. He then passed the order 10-9-1956 cancelling the allotment made on 27-4-1956.

4. The landlord also contends that he lives in a part of the same building and, therefore, no allotment order in respect of the shop could have been made without consulting him. He was never consulted.

5. In the counter-affidavit filed on behalf of the Rent Control and Eviction Officer it is stated that the allotment order was cancelled because it was subsequently found, on the representation of the landlord and after enquiries, that the allotment was obtained by mis-representation and in collusion with the previous tenant. It is admitted that the Rent Control and Eviction Officer made certain enquiries on the spot. But it is stated that the record does not indicate the nature of questions put to the petitioner by that Officer. The case of the respondent No. 1 is that he made enquiries into the allegations of collusion and fraud and satisfied himself as to the genuineness of the complaint made by the landlord. Thereupon he cancelled his previous order of allotment. After cancellation the petitioner was directed to deliver possession of the shop to the owner.

6. The learned Counsel for the petitioner Mr. M. H. Beg contended that the order cancelling the allotment was illegal as if had been passed without giving the petitioner a reasonable opportunity of meeting the charges of fraud or collusion. He argued that the so-called hearing which took place before the Rent Control and Eviction Officer did not amount to a fair opportunity to the petitioner to meet the charges. As the replies of the respondents in their counter-affidavits were vague and unsatisfactory, I summoned the record of the case and have examined it in detail. It shows the following facts.

On 4-4-1956, the previous tenant Dr. Mangal Sen sent a formal intimation to the Rent Control and Eviction Officer that he had vacated the shop in dispute. Thereupon that Officer passed the order, "Notify." Presumably there is a practice to notify all vacancies on the Notice Board of the Office of the Rent Control and Eviction Officer. On the same date the petitioner made an application for allotment on the standard printed form. He stated in it that the previous tenant had vacated the shop. He also stated that he needed the shop for the purpose of carrying on the business of buying and selling ordinary bangles of Kanchar. He also stated that he had no other shop in his possession. The Rent Control and Eviction Officer passed a very brief order:

"Notify and refer to Ad. C. (Advisory Committee)". On 27-4-1956, he passed an

order allotting the shop to the petitioner. On 3rd May, 1956 the petitioner wrote to that officer that he had occupied the shop in pursuance of that allotment order. It was received by the Rent Control and Eviction Officer on 4-5-1956. On 5-5-1956 the landlords made their application initiating the proceedings which eventually led to the cancellation of the allotment order. It, therefore, deserves to be quoted in full. It runs as follows:

"We beg to submit that the above mentioned shop is owned by them. That the tenant is Mangal Sen s/o. Harnam Dass Sarai Mehdi. That recently we have come to know that the shop in question has been allotted to one Mohd. Ishaq s/o, Alla Rakha R. O. Mohalla Misran Khalapur, Saharan-pur and he has applied for allotment through collusion of the present tenant. That the allotment has been obtained through fraud and misrepresentation of facts. That the outgoing tenant has accepted some pagri from the present allottee and thus got the allotment order in favour of the present allottee in collusion with each other.

As the action of both of them is in contravention of law, serious steps are requested to be taken in the matter.

It is, therefore, prayed that the allotment Order be kept in abeyance till the matter is enquired into and decided and the possession be not delivered to the present allottee.

Submitted.

Sd. B. Mohd. Athar and

Sd. Haji Mohd. Akhtar."

7. On this application the Rent Control and Eviction Officer passed a short order: "17-5-56 is fixed for hearing. Inform parties." On the same date a letter was sent to the petitioner informing him that the execution of the allotment order had been stayed and requiring him not to take possession of the shop till further orders. It is noteworthy that the order contains no reason for this direction nor does it give any information about the application for cancellation made by the landlord. No copy of that application was sent with this direction or at any other time.

On 15-5-56 the Rent Control and Eviction Officer sent a notice to the petitioner asking him to attend the office personally or through counsel on 26-5-1956. A similar notice was sent to the landlord and to the previous tenant Dr. Mangal Sen. The notice did not enclose a copy of the landlord's application for cancellation nor did it (sic)ate why the petitioner was being asked to attend.

It appears that no proceedings could be held on 26-5-1956 because Dr. Mangal Sen could not attend and the hearing was adjourned to 23-8-1956. On that date the landlord Haji Mohammad Akhtar gave evidence. Dr. Mangal Sen was also examined. In his evidence the landlord did not give any particulars about the misrepresentation or fraud alleged to have been committed by the petitioner, nor

of the collusion between them. Moreover he did not say a word about the petitioner having another shop at the time of the allotment order. The evidence of the parties was closed on that date.

It appears that on 7-9-1956 the Rent Control and Eviction Officer gave notice to the parties that he would make an inspection of the shop in dispute on 9-9-1956, in the morning. This notice was served on the petitioner on 8-9-1956. But on the morning of the inspection the landlord made an application in which, for the first time, he alleged that the petitioner had another shop but had concealed this fact at the time of making the application for allotment. From the record it appears that no copy of this application was sent to the petitioner.

In fact he was not even informed that such an application had been made. On 10-9-1956 the Rent Control and Eviction Officer passed the impugned order cancelling the allotment in favour of the petitioner. I shall now consider whether the order of the respondent No. 1 is valid. The Rent Control and Eviction Officer has the power to review or recall an order of allotment. But if the allottee has taken possession of the premises and the vacancy has been filled up, the power to cancel the allotment order can be exercised within limits. He can cancel it if the order was obtained by fraud or misrepresentation.

It is well known that fraud or misrepresentation will vitiate the most solemn proceedings. But before cancelling his order, the Rent Control and Eviction Officer must inquire into the matter and formally pronounce the allottee guilty of fraud. The proceedings are quasi judicial and the allottee must be given an opportunity to meet the charges of fraud or misrepresentation. In the present case the allotment had been cancelled on the ground that it was obtained by the petitioner by misrepresenting facts and colluding with the outgoing tenant. After holding an enquiry the Rent Control and Eviction Officer held the petitioner to be guilty of misrepresentation and collusion and "possibly" of having paid an illegal premium. Two questions arise: (1) Did the petitioner have an opportunity of meeting the charges against him? (2) Is the order erroneous on the face of it?

8. The petitioner's grievance is that he was never informed of the specific acts or representations which are imputed to him. After examining the record in detail, including the application of the landlord for cancellation and the depositions of Mohammed Akhtar and Dr. Mangal Sen before the Rent Control and Eviction Officer, I have come to the conclusion that the petitioner's allegation in his affidavit that he was not given an opportunity to meet the charges against him is correct. The landlord's application for cancellation contains no particulars of fraud or misrepresentation or collusion. This application initiated the proceedings resulting in cancellation of the allotment and forms part of the record.

Even a copy of it was not served on the petitioner. He has stated in paragraph 6 of his affidavit that the Rent Control and Eviction Officer asked him a few questions, but did not give him any particulars of the fraud or collusion alleged against him. In the statement before the Rent Control and Eviction Officer the

landlord Mohammed Akhtar states that Dr. Mangal Sen was the previous tenant of the house in dispute.

He paid rent for the month of April. He vacated the shop towards the end of May. When the order of allotment was served on the landlord Dr. Mangal Sen was present. His furniture was still in the shop. Dr. Mangal Sen told him that he had let out the shop and that he would be responsible (to the landlord) for payment of rent. Even this belated statement gives no particulars of the fraud or collusion imputed to the petitioner and there is not a word in it about any premium (pugree) having been paid. Thus, throughout the proceedings before the Rent Control and Eviction Officer the petitioner was under a handicap in meeting the charges against him. His allegation that he was kept in ignorance of the particulars of fraud or collusion imputed to him has not been controverted and is corroborated by the record.

9. For the first time on 9-9-1956, the landlord submitted an application before the Rent Control and Eviction Officer alleging that the petitioner had another shop but had concealed this fact at the time of the allotment. He asked the Rent Control and Eviction Officer to verify this allegation. No copy of this application was served on the petitioner. It appears that the Rent Control and Eviction Officer made some kind of enquiries and has relied upon this allegation in his order cancelling the allotment.

The petitioner's grievance is that he was given no opportunity of proving to the Rent Control and Eviction Officer that the allegation was incorrect. He states that he never had a shop of his own but was permitted by one Noor Hasan to use his shop for the purpose of selling his wares. He further states that Noor Hasan took advantage of his difficulties and this compelled him to apply for a shop of his own. This is a plausible explanation which might have appealed to the Rent Control and Eviction Officer if he had given the petitioner an opportunity of meeting the allegation.

Mr. Laxmi Saran, learned counsel for the State, relied upon this very allegation as the act of misrepresentation committed by the petitioner. He contended that the petitioner had misled the Rent Control and Eviction Officer by pretending that he had no other shop. If he had told the truth he might not have been selected for this particular allotment. This would have been a valid argument if counsel had been able to show that the petitioner had been given an opportunity of meeting this allegation.

He conceded that there is nothing on the record to prove that the petitioner was given such opportunity. But he relied on paragraph 6 of the petitioner's affidavit to show that such an opportunity must have been given. That paragraph relates in detail the questions put by the Rent Control and Eviction Officer to the petitioner at the time of the inspection. It shows that he was not asked whether he had any other shop. I therefore hold that the petitioner was not given sufficient opportunity to meet the charges against him.

10. In his counter affidavit the landlord alleges that no intimation of the vacancy had been given by the landlord or by the tenant to the Rent Control and Eviction Officer, and that the petitioner wrongly alleged in his application for allotment that the tenant did not wish to continue as tenant. The landlord says, "it was on the basis of the petitioner's application that it (the shop) was allotted to him on 27-4-56"

Thus, according to the landlord the petitioner's misrepresentation consisted of the wrong statement that neither the landlord nor the tenant had given any intimation of vacancy. The Rent Control and Eviction Officer has given no finding on this vital issue that is, whether he received intimation of the vacancy or not as stated above, I looked into the record of the proceedings before the Rent Control and Eviction Officer to verify the correctness of the landlord's allegations.

I find that the petitioner made no wrong allegation about the vacancy and that it is the landlord who is not telling the truth. There is a letter in the file of the Rent Control and Eviction Officer signed by the previous tenant Mr. Mangal Sen and informing that Officer that he had vacated the shop. It is dated 4-4-1956. On receipt of it the Rent Control and Eviction Officer passed the order, "notify".

11. It appears to me that the landlord started his case with the allegation that the misrepresentation consisted of the petitioner's statement about the existence of a vacancy, but changed it on 7-9-1956 when he made his application accusing the petitioner of suppressing the fact that he had another shop. In his order cancelling the allotment, the Rent Control and Eviction Officer constructed a fresh case against the petitioner when he observed

"I am satisfied that the possession was not delivered by the outgoing tenant to the owner. As a matter of fact the outgoing tenant had allowed Mohd. Ishaq to occupy the shop before reporting the vacancy to this office."

There is not a word about this charge in the landlord's application for cancellation of the allotment. All this supports the petitioner's grievance that he was not given a proper opportunity of meeting the case against him.

12. The petitioner was a tenant in possession. His tenancy rights partake of the character of property rights. It was held by this Court in *Rameshwar Prasad Kedarnath Vs. The District Magistrate and Others*, that a man must not be deprived of his property without being given the opportunity of being heard. The protection of this principle was intended by the court to the right to carry on one's business. In the present case the order cancelling the allotment of the shop in favour of the petitioner and seeking to evict him will have the effect of destroying his tenancy and interfering with his right to carry on his business in the shop. The order was passed without giving the petitioner a proper opportunity to show cause against the proposed action. It is an illegal order and liable to be quashed on that ground alone.

13. I am also of the opinion that the order is erroneous on the face of it. The

Rent Control and Eviction Officer says,

"There are reasons to believe that the allotment of this shop was obtained by Mohammad Ishaq on misrepresentation of facts and in collusion with Dr. Managal Sen. The possibility of paying any pugree etc. cannot be ruled out."

The order does not specify the particulars of misrepresentation or collusion. Moreover, the observation that the possibility of payment of any pugree cannot be ruled out is not a legal finding. There was no question relating to payment of premium before the Rent Control and Eviction Officer. Even the landlord said nothing about it in his deposition. But the Rent Control and Eviction Officer allowed himself to be influenced by the bare possibility that any pugree might have been paid. This was a wrong approach which vitiates the order.

14. Mr. Beg pointed out that the order also directs the petitioner to deliver possession of the premises to the owner. This part of the order is obviously made in the exercise of the power u/s 7-A(2) of the Act. Mr. Beg, however, contended that even an unauthorised occupant cannot be directed by a summary order u/s 7-A to vacate the premises unless the procedure prescribed in Sub-section (1) has been complied with. In this case no notice was served on the petitioner asking him to show cause why he should not be evicted from the premises. The record corroborates Mr. Beg's contention which has not been denied. It appears that no notice u/s 7-A(1) was served on the petitioner. Therefore this direction is illegal.

15. The petition succeeds. I quash the order of the Rent Control and Eviction Officer cancelling the allotment and directing the petitioner to deliver possession to the owner. The petitioner shall receive Rs. 100/- as costs from the landlords respondents 2 and 3 and legal costs from respondent No. 1.