
(1971) 11 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 565 of 1970

Nand Lal Lurkoo

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-11-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7(2), 7F

Citation : AIR 1972 All 312 : (1971) 41 AWR 834

Hon'ble Judges : Gur Sharan Lal, J

Bench : Single Bench

Advocate : S.K. Tewari and Y.K. Shukla, for the Appellant; G.P. Bhargava, A.N. Bhargava and Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Gur Sharan Lal, J.—This writ petition relates to a matter arising under the U. P. (Temporary) Control of Rent and Eviction Act. 1947 (hereinafter referred to as the Act).

2. There is a shop in Ratia Bazar, Brindaban of district Mathura bearing No. 1162 B, which has been given the new No. 494. The petitioner made an application to the Rent Control and Eviction Officer, Mathura, giving out that the said shop was in the tenancy of one Krishna Gopal who vacated it and left Brindaban to settle at Bombay and carry on business there. He prayed for allotment of that shop to him, giving put that Dau Dayal (impleaded as opposite party No. 3 to the writ petition) had illegally taken possession of that shop. It is not in dispute that Dau Dayal is the own brother of Krishna Gopal. The Rent Control and Eviction Officer held after enquiry, and by means of an order of which copy is Annexure E to the writ petition, that the shop was not vacated or vacant. His finding was that the shop was in the tenancy of Moti Lal, father of Krishna Gopal and Dau Dayal, and after Moti Lal's death both Krishna Gopal and Dau Dayal became its tenants. So according to him even if Krishna Gopal left Brindaban and went to Bombay. Dau

Daval continuing to be its tenant. Thus holding that the shop could not be declared vacant the application for its allotment was dismissed.

3. The petitioner Nand Lal approached the State Government u/s 7-F of the Act. The State Government passed an order of which copy is Annexure F to the writ petition rejecting the application in revision on the ground that the Rent Control and Eviction Officer had found that the shop was not vacant and had not passed any order u/s 7(2) of the Act and therefore no revision lay u/s 7-F of the Act. The petitioner made an application for review and the same was also rejected by an order of which copy is Annexure G to the writ petition.

4. In the writ petition a prayer has been made for quashing the order of the Rent Control and Eviction Officer and the two orders of the State Government. In regard to the order of the State Government the ground advanced for quashing it is that revision did lie and the State Government failed to exercise the jurisdiction vested in it.

5. The writ petition has been contested by Dau Dayal by filing a counter affidavit but at the time of the hearing of the writ petition neither Dau Dayal nor his counsel turned up. It has therefore been heard ex parte.

6. Learned counsel for the petitioner has stated that he confines his argument to the invalidity of the orders of the State Government and if the court finds that the rejection of the revision is not open to challenge, then he will not pursue the relief in regard to the quashing of the order of the Rent Control and Eviction Officer. The short question to be decided therefore is whether the State Government failed to exercise jurisdiction vested in it by stating that it could not pass any order in revision against the order of the Rent Control and Eviction Officer since the latter order was not an order u/s 7(2) of the Act.

7. Section 7(2) reads:--

"The District Magistrate may by general or special order require a landlord to let or not to let to any person any accommodation which is or has fallen, vacant or is about to fall vacant".

It will appear that the question of passing an order about letting or not letting will arise under the above quoted subsection only in respect of an accommodation which is or has fallen vacant or is about to fall vacant. This fact, that is to say, an accommodation being vacant or having fallen vacant or being about to fall vacant is therefore a condition precedent to the exercise by the District Magistrate of his power conferred by Section 7(2) to order a landlord to let or not to let such accommodation. The said fact or condition is therefore a jurisdictional fact which must exist before the order for letting or not letting can be passed. The Rent Control and Eviction Officer found as a fact that the shop had not fallen vacant. After this finding there was no occasion for him to pass any order to the landlord either to let the accommodation or not to let the accommodation.

8. Coming to Section 7-F, it is in the following words:--

"The State Government may call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in Section 3 or requiring any accommodation to be let or not to be let to any person u/s 7 (or directing a person to vacate any accommodation u/s 7-A) and may make such order as appears to it necessary for the ends of justice".

The above quoted section deals with three cases in which the State Government may pass orders under the section. One of them is a case in which the accommodation has been required to be let or not to be let to any person u/s 7. The question arises whether the order passed by the Rent Control and Eviction Officer in the instant case is an order which can be regarded as covered within the words "requiring any accommodation to be let or not to be let to any person u/s 7" contained in Section 7-F. As pointed out above, the occasion for the Rent Control and Eviction Officer to pass an order for letting or not letting the accommodation in dispute did not arise at all when he found that the very condition upon the existence of which he could exercise his jurisdiction was non-existent. The order rejecting the petitioner's application on the finding that the shop was not vacant cannot therefore be held to be an order requiring the accommodation not to be let to any person. Section 7-F will therefore not cover that order. The State Government was therefore right in rejecting the petitioner's application in revision and of course also the application for review.

9. While the judgment was being dictated Sri G. P. Bhargava came for the contesting respondent Dau Dayal but since the writ petition is being dismissed it is unnecessary to hear him.

10. In the result the writ petition is dismissed but there is no order as to costs.