

(1960) 09 AHC CK 0004
In the Allahabad High Court
Case No : Writ Petition No. 55 of 1960

Narotam Das Kohli

APPELLANT

Vs

State of Uttar Pradesh and others

RESPONDENT

Date of Decision : 09-09-1960

Acts Referred:

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

Citation : (1961) 31 AWR 160

Hon'ble Judges : J.K. Tandon, J

Bench : Single Bench

Advocate : K.S. Verma, for the Appellant; N. Banerji for Opposite Party No. 3, for the Respondent

Final Decision : Allowed

Judgement

J.K. Tandon, J.—The subject matter of controversy in this petition is house No. 824 situate in Wingfield Park in the town of Lucknow. The Petitioner claims that he has been in occupation of this building as a tenant thereof since 1946. According to him the tenancy started in that year in his favour jointly with one Sri H.D. Saurashtri on a monthly rent of Rs. 31 40. In 1949, he goes on to state, he started a hosiery factory in it and invested large amounts over this business. On 27-3-1959, he and Sri Saurashtri were served with a notice purporting to be u/s 7A(1) of the UP (Temporary) Control of Rent and Eviction Act, 1947, by the Rent Controller asking them to show cause why they should not be evicted within three days of the receipt of the notice. He then states that within the time allowed the necessary reply was furnished to the Rent Controller but on the 6th April, 1959 a further notice was given to him by the Rent Controller directing him to vacate the accommodation within two days. The proceedings resulting in the two notices sent by the Rent Controller appear to have been commenced at the instance of Ganga Prasad Dhyani, Respondent No. 3 who moved the Rent Controller saying that the Petitioner was in unauthorised occupation of the

accommodation. The Rent Controller apparently accepted his contention and also made an allotment order in his favour. When, however, Ganga Prasad was unable to take possession he caused these notices to be issued.

2. Once the notice under sub S. (2) of Section 7A had been given to the Petitioner to vacate the accommodation within two days he moved a petition in revision. The Commissioner accepted his revision, firstly, as he was not satisfied that there was a vacancy and secondly, because the Petitioner was in any case in occupation of the accommodation since 1954, therefore it was not a fit matter to be proceeded against u/s 7A. The order of the Rent Controller was thus set aside by him. The third Respondent then approached the State Government u/s 7F which, however, has restored the order of Rent Controller. Hence the instant petition.

3. The State Government has not entered appearance. Respondent No. 3 alone has appeared in reply.

4. The Petitioner very definitely alleged in his petition and also in the accompanying affidavit that he entered upon the accommodation as a tenant in 1946 i.e. at a time when the Control of Rent and Eviction Act was not in force, the above assertion has not been denied by the contesting Respondent. He has merely said in his counter affidavit that the Petitioner produced no receipts about rent and also that his name did not appear in the municipal records. But none of these facts are able to displace the Petitioner's claim that he had been occupying the accommodation as a tenant since 1946. As a matter of fact, the Respondent admitted the Petitioner's occupation as a tenant since 1954 when, it was urged, he had wrongfully entered into possession. The Commissioner was not wholly satisfied with this contention but he did not go further into the matter as he was of the opinion that possession since 1954 alone was sufficient for setting aside the order of the Rent Controller. It is unnecessary to point out that absence of entry as a tenant in municipal papers is unable to show that the person claiming to be a tenant is not in occupation of the accommodation. Entries in favour of tenants very often are not made in municipal papers. No inference can, therefore, be based on the absence of such entries. In my opinion, and I hold it for the purpose of this case, the Petitioner has been in possession of the accommodation since 1946.

5. Now the question arises whether the order of the Rent Controller can be a legal order under the above circumstances. Section 7F confers power on the State Government to call for the record of any case by which any accommodation has been required to be let or not to be let to any person u/s 7 and to make such order as appears to it to be necessary for the ends of justice. However, before the State Government can really exercise the said power u/s 7F, that is direct any accommodation to be let out to any person or not to be so let out to him, the conditions necessary under the law for making an order for allotment must exist. Section 7(2) of the Act gives power to the Rent Controller to direct any particular accommodation to be let out to a person named by him where the

accommodation is either vacant or is likely to fall vacant. A present vacancy or a vacancy likely to occur in the near future is necessary and unless this condition is present and fulfilled the jurisdiction to make an allotment order does not exist. The jurisdiction arises only where there is a vacancy or a vacancy is likely in the near future. In the present case the facts show that there was no vacancy nor any was likely. Even the fact that originally there were two co-tenants, viz. the Petitioner & Sri Saurashtri but subsequently the latter withdrew from the accommodation failed to alter the true position; because the Petitioner being one of the co-tenants, was entitled to remain in occupation of the accommodation, as, indeed, he did. The jurisdiction u/s 7F is circumscribed in the matter of directing the letting out of an accommodation similarly as the jurisdiction of the Rent Controller under sub S. (2) of Section 7. Unless, therefore, there is a present vacancy or one is likely, the State Government has no jurisdiction u/s 7F to direct the accommodation to be let out to any person.

6. In the above view of the matter the impugned order by the State Government is an order without jurisdiction. The same, therefore, deserved to be quashed.

7. The petition is accordingly allowed. The order of the State Government dated 11-31960, is quashed. The Petitioner will get his costs from Respondent No. 3.