

(1967) 07 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2049 of 1965

Om Prakash Agarwal

APPELLANT

Vs

Rent Control and Eviction Officer

RESPONDENT

Date of Decision : 20-07-1967

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 17

Citation : (1967) 37 AWR 695

Hon'ble Judges : S.D. Khare, J

Bench : Single Bench

Advocate : Ambika Prasad, for the Appellant; Krishna Sahai, for the Respondent

Final Decision : Allowed

Judgement

S.D. Khare, J.—This is a petition Under Article 226 of the Constitution of India and the prayer is that a writ in the nature of a writ of certiorari may be issued quashing the impugned orders dated 23-6-1965 (Annexure IV and V) passed by the opposite party No. 1.

2. The accommodation in question is a portion of Kothi No. 54, Churchill Road, Civil Lines, Moradabad. The Petitioner purchased the Kothi by means of a sale deed dated 3-5-1965 for a consideration of Rs. 1,10,000/-, two tenants of which the Civil Surgeon Moradabad and one Mrs. G.B. Singh lived in portions of that Kothi. The portion occupied by Mrs. G.B. Singh fell vacant and on 17-5-1965 the Petitioner, who had purchased the Kothi a few days earlier, applied for the release of the portion occupied by Mrs. G.B. Singh, Sri V.S. Mathur, A.S.P., Moradabad, opposite party No. 3, applied for the allotment of the portion of the house previously occupied by Mrs. I.B. Singh. The Rent Control and Eviction Officer, Moradabad, dismissed the application for release moved by the owner of the house and allotted the house (portion) to opposite party No. 3.

3. While rejecting the application moved by the owner for the resale of the house the Rent Control and Eviction Officer accepted the case of the Petitioner that he

had no house of his own at Moradabad and was living in a portion of the house of his friend named Sri Bishan Narain. The Rent Control and Eviction Officer, however, dismissed the application for the release of the accommodation moved by the owner of the house merely on extraneous considerations such as why the Petitioner had never made any attempt to get any house allotted in his favour and why he had not built a house of his own, particularly when he had ample money at his disposal.

4. It has been contended by the learned Counsel for the Petitioner that both the impugned orders should be quashed for the simple reason that there had been no consideration at all of the need of the landlord and the Rent Control and Eviction Officer had dismissed his application for release without exercising the jurisdiction vested in him.

5. The learned Counsel for the opposite party No. 3 has stated that Sri V.S. Mathur (opposite party No. 3) is no longer in occupation of the house by virtue of the allotment in his favour because he has been transferred from Moradabad. The learned Standing Counsel has invited my attention to the fact that the Petitioner has moved a second application before the Rent Control and Eviction Officer, Moradabad, for the release of the house in his favour. The learned Counsel for the Petitioner does not dispute that position, but seeks; to get the order dated 23-6- 1965 passed by the Rent Control and Eviction Officer quashed, so that the matter may be considered again by the Rent Control and Eviction Officer, Moradabad. He has further stated that a second application has been put in because the changed circumstances up to the period of two years have also to be taken into consideration.

6. Rule 6 of the Rules framed u/s 17 of the UP (Temporary) Control of Rent and Eviction Act, 1947 provides that when the District Magistrate is satisfied that an accommodation which has fallen vacant or is likely to fall vacant is bonafide needed by the landlord for his own personal accommodation the District Magistrate may direct the landlord to occupy it himself.

7. It was held in a Full Bench case of Ram Surat Singh v. Rent Control and Eviction Officer 1964 AWR 177 that the provisions of Rule 6 framed under UP (Temporary) Control of Rent and Eviction Act, 1947 are mandatory and if the District Magistrate is satisfied that the landlord requires the accommodation for his own personal occupation he must in each and every case permit him to occupy the same. The word "may" used in Rule 6 has to be considered to have the force of the word "shall".

8. It was necessary for the Rent Control and Eviction Officer, Moradabad, to have disposed of the application of the landlord for the release of the accommodation on merits and not to have dismissed it merely on extraneous circumstances after accepting the case of the Petitioner at its face value.

9. The result is that the writ petition is allowed and the orders (Annexures IV and V of the writ petition) dated 23-6-1965 passed by the Rent Control and Eviction

Officer (opposite party No. 1) are quashed. The Rent Control and Eviction Officer will now proceed to consider the application of the Petitioner for the release of the accommodation on merits according to law. This order will not disentitle the opposite party No. 1 to consider other circumstances which the Petitioner may like to press in his favour and also the applications for allotment of the accommodation which might be made by other persons. I make no order as to costs.