

(1976) 09 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4008 of 1975

Pralilad Rai and another

APPELLANT

Vs

Third Additional District Judge, Muzaffarnagar and others

RESPONDENT

Date of Decision : 03-09-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16, 17(1), 17(2)

Citation : (1976) 09 AHC CK 0036

Hon'ble Judges : N.D.Ojha, J

Final Decision : Disposed Of

Judgement

N.D. Ojha, J.

Petitioner no. 1 Pralilad Rai is the Landlord of the accommodation which was the subject matter of proceedings giving rise to the present writ petition. It was in the tenancy of one B.S. Maliesh. It appears that B.S. Maliesh vacated the accommodation and an application was made by petitioner no. 1 for its release in his favour on the ground that the bonafide required it "or his personal use. Another application was made by respondent no. 3 for allotment of the accommodation in his favour. The application for release was dismissed on 24th April, 1974, so that the need of petitioner no. 1 was not found to be bonafide. On the same date the accommodation was allotted to respondent no. 3. It appears that respondent no. 3 also occupied the accommodation on the same date. Petitioner no. 1 filed an appeal against the order dated 24th April, 1974. The District Judge came to the conclusion that the application for release made by petitioner no. 1 has been rightly rejected. He however, held that the order of allotment passed in favour of respondent no. 3 was illegal inasmuch as a part of the building was in the occupation of the petitioner for residential purposes and he had not been given any opportunity to nominate a person of his choice for purposes of passing an order of allotment in his favour as contemplated by Section 17 (2) of the Act. On this view he set aside the order of allotment and

remanded the case back to the Prescribed Authority. Thereafter the petitioner nominated two persons, viz. Kisan Lal, his own father and Gurdas Prasad, petitioner no. 2. The Prescribed Authority did not accept the nomination in favour of Kisan Lal on the ground that he was the father of petitioner no. 1 himself whose application for release had already been dismissed. It may be pointed out that in the application for release Kisan Lal had been shown as a member of the family of petitioner no. 1. The Prescribed Authority, however, allotted the accommodation in favour of petitioner no. 3 as a consequence whereof the application for allotment made by respondent no. 3 was dismissed. Against that order an appeal was filed by respondent no. 3 which was allowed by the 3rd Additional District Judge on December 11, 1974, on the ground that petitioner no. 2 was just a dummy candidate of petitioner no. 1. It is this order of the Additional District Judge which is sought to be quashed in the present petition.

It was urged by counsel for the petitioners that the Additional District Judge was wrong in setting aside the order of the Prescribed Authority allotting the accommodation in favour of petitioner no. 2 on the ground that he was the dummy candidate of petitioner no. 1. According to counsel in view of the plain Language of Section 17 (2) there was no discretion left either with the Prescribed Authority or with the appellate authority to allot the accommodation in question in favour of any person other than the nominee of petitioner no. 1. Reliance was placed on the Language of Section 17 (1) in support of this submission.

It will be useful to quote Section 17 at this place in order to appreciate the submission made by counsel for the petitioners:

"17 (1) Where the District Magistrate receives an intimation, under subsection (1) of section 15, of the vacancy or expected vacancy of a building any allotment order in respect of that building shall be made and communicated to the landlord within twentyone days from the date of receipt of such intimation and where no such order is so made or communicated within the said period, the landlord may intimate to the District Magistrate the name of a person of his choice and thereupon the District Magistrate shall allot the building in favour of the person so nominated unless for special and adequate reason to be recorded he allots it to any other person within ten days from the receipt of intimation of such nomination:

Provided that where the landlord has made an application under clause (b) of subsection (1) of section 16, for the release of the whole or any part of the building or land appurtenant thereto in his favour, the said period, of twenty one days shall be computed from the date of decision on that application or where an application for review or an appeal is filed against such decision, from the date of decision on such application or appeal.

(2) Where a part of a building is in the occupation of the landlord for residential purposes or is released in his favour under clause (b) of subsection (1) of section 16 for residential purposes, the allotment of the remaining part thereof under

clause (a) of the said subsection (1) shall be made in favour of a person nominated by the landlord."

It was urged that while the words ".....unless for special and adequate reason to be recorded he allots it to any other person within ten days from the receipt of intimation of such nomination"; were used in Section 17 (1), these words were deliberately not used in Section 17 (2). According to counsel this clearly indicate that the intention of the legislature was not to give power to the District Magistrate to allot the accommodation in cases covered by section 17 (2) to any other person other than the nominees of the landlord even for special and adequate reason. In my opinion there is no substance in this submission. Section 16 deals with the allotment and release of vacant buildings. Subsections (1) and (2) of Section 16 read as follows:

"16 (1) Subject to the provisions of this Act, the District Magistrate may by order

(a) Require the landlord to let any building which is or has fallen vacant or is about to fall vacant, or a part of such building but not appurtenant land alone to any person specified in the order (to be called an allotment order); or

(b) Release the whole or any part of such building or any land appurtenant thereto, in favour of the landlord (to be called a release order).

Provided that in the case of a vacancy referred" to "in subsection (4) of section 12, the District Magistrate shall give an opportunity to the landlord or the tenant as the case may be of showing that the said section is not attracted to his case before making an order under clause (a).

(2) No release order under clause (b) of subsection (1) shall be made unless the District Magistrate is satisfied that the building or any part thereof or any land appurtenant thereto is bona fide required either in its existing form or after demolition and new construction, by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade, calling or where the landlord is the trustee of a public charitable trust, for the objects of the trust, or that the building or any part thereof is in a dilapidated condition and is required for purposes of demolition and new construction, or that any land appurtenant to it is required by him for constructing one or more new building or for dividing it into several plots with a view to the sale thereof for purposes of construction of new buildings:

Provided that no application under this subsection shall be entertained for the purposes of a charitable trust the objects of which provide for discrimination in respect of its beneficiaries on the ground of religion, caste, or place of birth."

A perusal of subsection (2) indicates that even in the case of a vacant building an order of release cannot be passed in favour of the landlord on an application made by him under section 16 (1) (b) unless the District Magistrate was satisfied that the building or any part thereof was bonafide required by him. If the

interpretation put by counsel for the petitioners were to be accepted the landlord can defeat the provisions of section 16 (2) by nominating a member of his own family as the prospective allottee even after his own application for release had been dismissed on a specified finding that his need was not bonafide or genuine. It was done even in the instant case. After the application for release made by petitioner no. 1 was dismissed he nominated his own father who was a member of his own family as a prospective allottee. If the interpretation put by the learned counsel is accepted District Magistrate was bound to allot the accommodation in favour of the father of the petitioner even though the application of the petitioner no. 1 for release was dismissed on a finding that his need was not bonafide. The discretion to let or not to let a vacant building has not been left with the landlord under the Act. It is controlled by the District Magistrate. The purpose of section 17 (2) is to enable the landlord to have a tenant of his choice. Its purpose, however, is not to enable the landlord not to allow a vacant building to let out in favour of any other person and to occupy it himself by getting it allotted in favour of a member of his own family even though his own need for the accommodation may have been found not to be genuine. The same principles can be applied in respect of a person who though may not be strictly of the landlord's own family but may have just been set up as a tool by the landlord for purposes of getting the accommodation released in his favour by the backdoor. It would be a case of utilising the services of a person who does not, require the accommodation for his own use but is willing to act as an instrument for making the building available to the landlord through him. An interpretation which is likely to lead to such a result cannot be accepted. The real distinction which lies in cases of applications covered by section 17 (1) and S. 17 (2) in this. Under S. 17 (1) even if the nominee of the landlord may have a bona fide need for the accommodation in question the District Magistrate has yet a discretion for special and adequate reason to be recorded "to let it to some other person and ignore the bonafide claim of the nominee of the landlord. By not using the words "unless for special and adequate reasons to be recorded he allots it to any other person" in section 17 (2) the legislature wanted to make it sure that the District Magistrate should not be given any power to pass an order of allotment in respect of an accommodation covered by subsection (2) of section 17 in favour of any person other than the nominee of the landlord even if the need of the nominee of the landlord was bona fide or genuine. To make it more clear in ordinary cases of allotment the District Magistrate will be bound to follow the procedure laid down in Rules 10 and 11 of the Rules. In cases covered by Section 17 (2) however, Rules 10 and 11 will not be applicable. The accommodation will have to be allotted in favour of the nominee of the landlord provided his need is found to be bona fide or genuine. In considering the question as to whether the need of the nominee under section 17 (2) of the Act was bona fide or genuine or not it would not be open to the District Magistrate to compare his need with any prospective allottee. The scope of inquiry will be restricted to find out as to whether the nominee himself bona fide requires the accommodation for the own use or has just been set up by the landlord to get

the accommodation released by the back door in his own favour. The scope of inquiry would be to this extent alone and no more. The moment the District Magistrate comes to the conclusion that the need of the nominee under section 17 (2) is bona fide he has no discretion but to allot the accommodation in favour of the nominee of the landlord. The submission made by counsel for the petitioner that in no case the District Magistrate has discretion to ignore the claim of the nominee of the landlord under Section 17 (2) and that he has to pass a mechanical order in favour of the nominee of the landlord cannot therefore, be accepted.

It was then urged by counsel for the petitioners that the finding of the Additional District Judge that the petitioner no. 2 was a dummy candidate of petitioner no. 1 is based on no evidence. Having heard counsel for the parties I am of opinion that there is substance in this submission. The order of the Additional District Judge in this behalf is more or less based on surmises. He has referred to no evidence on the basis of which he has come to the conclusion that the need of the petitioner no. 2 was not bona fide. The mere fact that he was a resident of Shalipur or that in his application the fact that he wanted the accommodation in question for educating his children was subsequently added was not a conclusive circumstance to indicate that his need was not bona fide. The matter had to be decided on the basis of evidence and not on mere surmises. The order of the Additional District Judge cannot, therefore, be sustained.

In the result the writ petition succeeds and is allowed. The order of the Additional District Judge dated December 11, 1974 is quashed and he is directed to decide the case afresh in accordance with law keeping in mind the observations made above. It would be open to the Additional District Judge to take additional evidence in order to decide the real controversy in a proper manner. He will, however, first consider the application for allotment made by petitioner no. 2 and find out as to whether his need was bona fide or not. In considering his need he will not compare it with that of respondent no. 3. It is only when he finds that the need of petitioner no. 2 was not bona fide that he may consider the application for allotment made by respondent no. 3. Since respondent no. 3 occupied the accommodation in pursuance of allotment order dated 24th April, 1974, on that very day and has been in possession over it now for more than two years, he will not be dispossessed till the appeal has been finally disposed of by the Additional District Judge. In the circumstances of the case the parties will bear their own costs.