

(1968) 05 AHC CK 0002

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2136 of 1967

Pritam Singh

APPELLANT

Vs

The Munsif City, Kanpur and others

RESPONDENT

Date of Decision : 03-05-1968

Acts Referred:

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

Citation : (1968) 38 AWR 630

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : Ambika Prasad and Mahesh Prasad, for the Appellant; K.C. Saxena for opp. parties, for the Respondent

Final Decision : Allowed

Judgement

Satish Chandra, J.—This petition arises out of proceedings u/s 7-B of the UP (Temp.) Control of Rent and Eviction Act. The Petitioner alleges that Dewan Singh, Respondent No. 3, let out the accommodation in dispute to him on a monthly rent of Rs. 70/- . On 19-12-1961, the Petitioner made an application for allotment. Ultimately on 3-3-1962, the accommodation was allotted in favour of the Petitioner by the RC and EO. Subsequently the landlord moved for cancellation of the order of allotment and on 19-12-1962, the order of allotment was cancelled. Then on 26-3-1966, the landlord made an application u/s 7-B of the Act for recovery of arrears of rent at the rate of Rs. 70/- per month. The Petitioner filed an objection inter alia on the ground that Section 7-B was not attracted in the case because the Petitioner was not in, possession of the accommodation in pursuance of an order of allotment. The objection has been rejected by the Munsif by the impugned order passed on 11-6-1967. He held that in view of the proviso to Sub-section (7) of Section 7-B of the Act the objection filed by the tenant could not be entertained because he had neither deposited the arrears of rent nor furnished security there for to the satisfaction of the court. He further observed that the Petitioner was in possession in pursuance of

an order of allotment and the cancellation of the order of the allotment did not change the position. The Munsif, therefore, allowed the application and directed that the Petitioner be evicted from the accommodation. Aggrieved the tenant has come to this Court.

2. Section 7-B empowers the landlord to make an application to the Munsif having territorial jurisdiction for an order of ejectment of the tenant. The conditions precedent for making an application u/s 7-B are (1) The person is in occupation of an accommodation in pursuance of an order made under the provisions of Sub-section (2) of Section 7 and (2) he is in arrears of rent or any installment thereof where it is payable in statements for more than three months. One condition precedent to the coming into operation of this section is that the tenant is in occupation of an accommodation in pursuance of an allotment order. The question is whether a person who came in possession in pursuance of an order of allotment or whose possession was recognised by the passing of an order of allotment in his favour but subsequently the order of allotment has been cancelled or withdrawn, remains in occupation after the cancellation of the allotment order in pursuance of that allotment order?

3. In my opinion the occupation can be in pursuance of an allotment order only so long as the allotment, order is in operation. So long as the possession can be referred to the order of allotment and justified thereunder it would be an occupation in pursuance of that order. After the order of allotment has been cancelled the continued occupation could not be referred to the order of allotment because the order of allotment was no longer in existence. After the cancellation of the allotment order the possession could not be in pursuance thereof. So, the landlord will not be entitled to make an application u/s 7-B after an order of allotment in favour of the tenant has been cancelled.

4. Section 7-B provides a speedy remedy in a limited class of cases. It is not available against a tenant who may be in possession otherwise than in accordance with an order of allotment. The tenants who were in possession of an accommodation before the coming into force of the UP (Temp.) Control of Rent and Eviction Act could not be made liable to eviction u/s 7-B of the Act. Similarly persons who were in possession without any lawful title or right, who may have entered forcibly or surreptitiously, would not be liable to eviction u/s 7-B. Section 7-A also provides a remedy for eviction of persons who may be in occupation of an accommodation in contravention of an order passed u/s 7(2). The Act, therefore, provides different remedies for different situations and for different classes of persons. The landlord could also go to the civil court and sue for the Petitioner's eviction on relevant pleas either on the ground that he was a tenant liable to ejectment or that he was a trespasser pure and simple. On the facts of this case, however, the landlord misconceived his remedy to lie u/s 7-B of the Act.

5. Though under the proviso to Sub-section (7) of Section 7-B the Petitioner's objection could not be entertained because the Petitioner had not made the requisite deposit, yet the court was bound to consider whether the Applicant had

fulfilled the conditions precedent and was entitled to invoke the jurisdiction conferred by Section 7-B. On the admitted facts that the order of allotment in favour of the Petitioner had been cancelled prior to the making of the application u/s 7-B, the provision of Section 7-B were not attracted and consequently the learned Munsif had no jurisdiction to pass an order under that provision. It is the duty of a court to satisfy itself as to its jurisdiction in entertaining a matter or in granting relief under a statutory provision. Even if the objection of the tenant could not be entertained, the court was obliged to look into the question of its own jurisdiction.

6. At the admission stage of this writ petition the Bench admitting it passed an interim order directing the RC and EO and the Munsif to forebear from evicting the Petitioner from the premises in dispute until further orders. This order was passed on the Petitioner's undertaking to deposit a sum of Rs. 2,520/- in the court of the Munsif and a further sum of Rs. 840/- with the Registrar of this Court within three months from 10-7-1967 and on the further undertaking given by the Petitioners that in the event of the petition being allowed by this Court the total amount of Rs. 3,360/- may be paid to the third Respondent Dewan Singh.

7. As the petition succeeds, the amount of Rs. 3,360/- deposited by the Petitioner in the court of Munsif City, Kanpur and in this Court, will be paid out to Respondent No. 3, Dewan Singh.

8. The petition, therefore, succeeds and is allowed. The impugned order of the Munsif is set aside. The application made by the third Respondent u/s 7-B is dismissed. The amount of Rs. 2,520/- deposited by the Petitioner in the court of Munsif City, Kanpur and the amount of Rs. 840/- deposited with the Registrar of this Court shall be forthwith paid to Respondent No. 3. The parties will bear their own costs.