
(1960) 10 AHC CK 0030

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 1598 of 1960

Sangam Lal Jaiswal and another

APPELLANT

Vs

Commissioner, Varanasi Division, Varanasi and others

RESPONDENT

Date of Decision : 10-10-1960

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7A(i)
Constitution of India, 1950 — Article 226
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7A(i)
Constitution of India, 1950 — Article 226
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7A(i)

Citation : (1961) 31 AWR 86

Hon'ble Judges : Kailash Prasad, J

Bench : Single Bench

**Advocate : S.N. Kacker, Jawahar Lal and S.B. Chaudhari s, for the Appellant;
K.P. Agarwal and Standing Counsel for Respondents, for the Respondent**

Final Decision : Allowed

Judgement

Kailash Prasad, J.—This is an application under Article 226 of the Constitution praying that a Writ of certiorari be issued quashing the order dated 28-4-1960 passed by the RC and EO, Varanasi and the order dated 10-6-1960 passed by the Commissioner, Varanasi Division. A further relief in the nature of a writ of prohibition has been prayed directing opposite parties Nos. 1 and 2 (Commissioner, Varanasi Division and Rent Control and Eviction Officer, Varanasi) not to enforce the aforesaid orders and dispossess the applicants.

2. The impugned orders were made in proceedings u/s 7A of the RC and EO Act. The dispute is about house No. D 53/ 94, Kamachha, in the city of Varanasi. The premises have been in the occupation of the Petitioner No. 1 as tenant thereof since 1955. Opposite party No. 3 is the landlord of the premises in question. Applicant No. 1 was transferred from Varanasi to Asansol. There is no material on the record from which the exact date of his transfer can be ascertained. It,

however, appears that he was transferred either at the end of 1959 or early in January 1960. On 26-2-1960 the premises in dispute were allotted to opposite party No. 4. Applicant No. 2 is a relation of applicant No. 1. On 4-3-1960 notices were issued by the RC and EO in purported exercise of powers u/s 7A (i) of the UP (Temp.) RC&E Act (hereinafter referred to as the Act) to applicant No. 2 and one Satnaram Prasad who is not a party to these proceedings calling upon them to show cause why they should not be evicted. Upon the issue of these notices objections were filed by the present applicants- applicant No. 1 filed his objections on 25-3-60 and supplementary objections on 6 4-1960 and objections by applicant No. 2 were filed on 14-4-1960. It appears that Satnaram Prasad had come to occupy the house temporarily as a guest and he left the house soon after the service of notice upon him. He, therefore, did not file any objection. The objections of the applicants were dismissed by the RC and EO by his order dated 28-4-1960. By the name order he further directed applicant No. 2 and Satnaram Prasad to vacate the premises. The applicant No. 2 then filed a revision from that order and his revision was dismissed by the Commissioner, Varanasi Division on June 10, 1960.

3. The contention of the Petitioners is that there has been no vacancy in respect of the premises in question and as such the RC and EO had no jurisdiction to allot the accommodation to opposite party No. 4 and that the applicant No. 2 being a Defendant of applicant No. 1 has a right to reside in the accommodation in question as there is no prohibition in law against relations of the tenant occupying the accommodation.

4. It is well established that the jurisdiction of the RC and EO to allot the accommodation arises if there is a vacancy. The main question, therefore, to be determined in this case is whether applicant No. 1 who has admittedly been the tenant vacated the premises or not.

5. The expression "vacancy" as used in the Rent Control and Eviction Act has been the subject of interpretation in several cases in this Court. In Mahabir Prasad v. Kewal Krishna 1953 AWR 73 it was held-

The word "vacant", used in the UP (Temporary) Control of Rent and Eviction Act (III of 1947) means that the tenant should have ceased to occupy the accommodation with the intention of not coming back to it again.

In Firm Sheo Kumar Krishna Kumar v. Iqbal Ahmad and another S.A. No. 2775 of 1959 decided on 7th July, 1960 it was held-

The fact alone that a tenant leaves the accommodation in his possession does not amount to his vacating the same. Mere withdrawal from the accommodation unless it is accompanied further by the intention of not returning to it either himself or by his nominee will not be vacation of the accommodation. The idea of the determination of the interest in which he held in his occupation the accommodation is implicit in the expression "vacant". If a tenant leaves the accommodation and implants upon it a sub tenant, a licensee or any other

nominee of his he cannot be said to have vacated the accommodation. In the eye of law it continues to be in his occupation though the actual occupation at the moment is that of his representative or nominee only.

In *Mahesh Prasad & anotehr v. Sri S.K. Sinha and others* Writ Pet. No. 1433 of 1958 decided on 9th August, 1960 the Court observed-

By termination of the lease the lessee may not be entitled in future to retain possession of the accommodation but so long as he does not completely withdraw his interest as lessee from the accommodation the accommodation cannot be said to be vacant.

6. It will appear from these decisions that mere physical absence of the tenant from the accommodation does not amount to vacancy unless he gives up the accommodation with the intention not to return to it or he completely withdraws his interest from it. If a tenant does not vacate the accommodation and allows any relation or representative of his to remain in occupation such an occupier cannot be considered as an unauthorised, occupier. But if an accommodation is vacated by the tenant and another person, not claiming through the tenant, without an order of the District Magistrate requiring the accommodation to be let to him, occupies it, his occupation will be unauthorized and proceedings u/s 7A can be taken against him. The question of the vacancy of the premises in dispute was therefore, considered by the RC & EO when proceedings u/s 7A of the Act were taken against applicant No. 2. In those proceedings the RC and EO came to the conclusion that applicant No. 1 the tenant, had ceased to occupy the house. The RC and EO did not use the expression that the tenant had "vacated" the accommodation. It was, therefore, argued by the Learned Counsel for the applicants that as the RC and EO did not find that the accommodation was vacated by the tenant, its occupation by applicant No. 2, who claimed to be there with the permission of applicant No. 1 and which claim was endorsed by applicant No. 1, could not be treated as unauthorized.

7. Although the RC and EO did not use the expression, "vacant", "vacancy", or "vacated" in his order, yet it is perfectly plain that when he stated that the applicant No. 1 had ceased to occupy the house he meant that it was vacated by him. The RC and EO was, however, in error in coming to the "conclusion that applicant No. 1 had vacated the house. His conclusion is based, as will appear from the order, on two broad facts, namely, applicant No. 1's taking up an appointment outside Varanasi and the fact that when the RC and EO made a surprise inspection of the house on 1st April 1960 he found some students living in the house and did not find applicant No. 1 or any member of his family present in the house. These facts alone cannot justify the conclusion that the applicant No. 1 had vacated the house unless it was further found that applicant No. 1 has left the house for good with the intention not to return to it or he- had completely withdrawn his interest from it.

8. Another factor that seems to have influenced the RC and EO in coming to the

conclusion that applicant No. 1 had vacated the house, was the report dated 6-4-60 of the Rent Control Inspector. The report is reproduced in paragraph 3(c) of the counter affidavit of the opposite party No. 4. The very opening portion of the report shows that the Inspector made a confidential enquiry for the purposes of making the report. It is difficult to understand why he should have made a confidential enquiry. If the Inspector had to find out whether applicant No. 1 had vacated the house or not, he (the Inspector) should have enquired into the matter openly by questioning the persons who were in the house or by asking from neighbours or such other persons whom the Inspector considered could be in the know of things. Little evidentiary value can be attached to such a confidential report.

9. The landing of the RC and EO suffers from another defect also. Prior to 1-4-60 he had made another surprise inspection of the house on 18-3-60. The contents of the report are mentioned in paragraph 8 of the counter-affidavit. It is stated in the report that the inspection was done in the presence of "parties." The RC and EO did not specify in the report what was meant by the expression "parties": but it appears that the expression included applicant No. 1. When applicant No. 1 filed his objections in proceedings u/s 7A of the Act, he definitely stated in paragraph 6 of the petition of objections that when the RC & EO inspected the premises he found the objector and the members of his family present. The objections were decided by the same officer who had made surprise inspection on 18-3-60. If the allegations in the objections about the presence of applicant No. 1 and the members of his family in the house at the time of the inspection were incorrect the officer must have said so in his order rejecting the objections. The RC and EO in his order did not take notice of this fact which was of vital importance.

10. On the basis of the confidential report of the Inspector the RC and EO mentioned in his order that applicant No. 1 was letting out the accommodation to other persons from time to time. This also influenced him in coming to the decision that applicant No. 1 had vacated the house. If applicant No. 1 has sublet the accommodation it may make him liable to ejectment but it does not show that he has withdrawn his interest from it. On the other hand, this provides evidence of the continuance of his interest in the accommodation.

11. Annexure "D" to the affidavit shows that the landlord (opposite party No. 3) has filed a suit for ejectment against applicant No. 1. Applicant No. 1 is contesting the suit and the copy of the written statement filed by him in the suit is annexure "E" to the affidavit. This furnishes additional evidence of the continuance of interest of the applicant No. 1 in the house.

12. It was contended on behalf of the opposite parties that the Court in exercise of its writ jurisdiction cannot examine the correctness of the finding of the RC and EO that applicant No. 1 had vacated the accommodation. Normally the Court in the exercise of its writ jurisdiction should not go behind the findings of facts in the orders of a court, tribunal or authority in respect of which writ is sought to be

issued, but a question of fact upon which jurisdiction to pass those orders depends can be examined by the Court.

13. In the present case it may be that the applicant No. 1 is continuing to retain interest in the accommodation for the benefit of applicant No. 2 who is a relation of his but the fact remains that he has not yet withdrawn his interest. Applicant No. 2 appears to continue in occupation with the permission and consent of the tenant. Applicant No. 2 cannot, therefore, be regarded to be an unauthorised occupant. Proceedings against him u/s 7 A of the Act were, therefore, not proper. The petition is, therefore, allowed with costs and the order dated 28-4-60 passed by Opposite Party No. 2 and the order dated 10-6-60 passed by Opposite Party No. 1 are quashed and the opposite parties are directed not to enforce those orders.