
(1967) 02 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2298 of 1966

Shiama Shanker Sharma

APPELLANT

Vs

The Rent Control and Eviction Officer and Another

RESPONDENT

Date of Decision : 06-02-1967

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 2(h), 7(1)

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 2(h), 7(1)

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 2(h), 7(1)

Citation : (1967) 37 AWR 229

Hon'ble Judges : R.S. Pathak, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Pathak, J.—The Petitioner is the owner of a house, No. 356/1, Model Town, Ghaziabad. He resides in one part of it. The other part was let out to a tenant, A.B. Hajela. The Petitioner came to know in May, 1966 that Hejela was intending to vacate the accommodation and anxious to secure possession of that accommodation for his own use, the Petitioner applied for its release in his favour. However, that application was not made until June 3, 1966 before which date an allotment order had already been made on May 24, 1966 by the first Respondent, the Rent Control and Eviction Officer, in favour of the second Respondent, S.P. Singh Chaudhry. The Petitioner now applies for an order quashing the allotment order.

2. The power to make an allotment order arises by virtue of Section 7(2) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947 when an accommodation is or has fallen vacant or is about to fall vacant. Now, in the instant case, it is clear that the allotment order was made in anticipation of the fact that the accommodation would become vacant. The order was made on May 24, 1966 and as appears from paragraph 9 of the counter-affidavit of S.P. Singh Chaudhry, the accommodation was vacated by Hajela on June 6, 1966.

3. The Petitioner says that there was no power to make the impugned allotment order because it was necessary that there should be a notice in writing from the landlord or the tenant to the District Magistrate that the accommodation was about to fall vacant and no such written notice was sent in the instant case. The Petitioner says that he inspected the record but was unable to find any information by Hajela that he was going to vacate the accommodation. The Petitioner's contention is founded on the submission that an accommodation about to fall vacant is deemed by Section 2(h) to be "vacant" for the purposes of the Act only after intimation that it is about to fall vacant has been sent by the landlord or the tenant to the District Magistrate. It is urged that the obligation to send such intimation is created by Section 7(1), which speaks of a notice in writing. Unless a written notice has been sent an accommodation about to fall vacant cannot be deemed to be "vacant."

4. Now, in the first place, Section 7(2) contemplates that an allotment order may be made not only when an accommodation is or has fallen vacant but also when an accommodation is about to fall vacant. It expressly speaks of an accommodation which "is about to fall vacant." When such express language is used it is wholly unnecessary to have recourse to the legal fiction incorporated by Section 2(h) for invoking the power to make an allotment.

5. Then, it is also clear that the terms of Section 7(1) are not in harmony with the language of Section 2(h). Section 7(1) contains two clauses. Clause (a) requires every landlord after an accommodation becomes vacant, to give notice of the vacancy in writing to the District Magistrate within seven days after the accommodation becomes vacant. Clause (b) similarly requires every tenant occupying accommodation when he vacates it or ceases to occupy it to give notice thereof in writing to the District Magistrate within seven days of that event. It will appear from Clause (a) that an accommodation may become vacant by the landlord ceasing to occupy it or by a tenant vacating it or otherwise ceasing to occupy it or by termination of a tenancy or by its release from requisition or in any other manner whatsoever. Now, it is clear from the terms of Section 7(1) that the notice envisaged by it is to be given after the accommodation becomes vacant. The obligation to give such notice does not arise before the accommodation has become vacant. On the contrary, in order that an accommodation can be said to be "vacant" within the terms of Section 2(h), it is necessary not only that the accommodation must be about to fall vacant but also that intimation of the fact has been sent by the landlord or the tenant to the District Magistrate. Both conditions must combine in order that an accommodation about to fall vacant can be described as "vacant." accommodation. It is apparent that Section 2(h) and Section 7(1) envisage different points of time. In the former, the intimation precedes the point when the accommodation can be deemed to be "vacant", in the latter the notice presupposes that the accommodation is already vacant. In this view of the matter, it seems to me that the intimation contemplated by Section 2(h) cannot be the notice which the landlord or the tenant is obliged by Section 7(1) to give

to the District Magistrate. That being so, the contention of the Petitioner that the intimation contemplated by Section 2(h) must be in writing has no force.

6. Now, the intimation that an accommodation is about to fall vacant may be sent either orally or in writing. It may be conveyed by word of mouth or by a written document. There is nothing in the terms of Section 2(h) to suggest that the intimation must be conveyed in writing only. If an accommodation is about to fall vacant and intimation of that fact has been sent by the landlord or the tenant to the District Magistrate either orally or in writing, the accommodation can be described as "vacant" for the purposes of the Act by reason of Section 2(h).

7. From the counter affidavit of M.S. Bist, the Senior Inspector in the Rent Control Office, it appears that after the application for allotment made by S.P. Singh Chaudhry on May 19, 1965, an inquiry was made from Hajela who was in possession of the accommodation and it was learnt that he was going to vacate the accommodation pursuant to his transfer to Meerut and it was thereafter that the accommodation was allotted to S.P. Singh Chaudhry on May 24, 1966. This averment is contained in paragraph 10 of the counter-affidavit. It is reiterated in paragraph 11 of the counter-affidavit that inquiries were made from Hajela and when it was found that he was vacating the accommodation then after due inquiry the accommodation was allotted to S.P. Singh Chaudhry. These averments are sworn to the personal knowledge of the Senior Inspector. There is nothing in the rejoinder affidavit which has been filed to controvert them. The rejoinder affidavit merely reiterates that there was no written notice. The information conveyed by Hajela during the inquiry amounts to intimation sent by him to the District Magistrate that the accommodation was about to fall vacant. That satisfies the definition of "vacant" set out in Section 2(h) and consequently, I hold that the accommodation must be said to have been "vacant" on the date when the allotment order was made.

8. Upon these considerations the first contention of the Petitioner is rejected.

9. The Petitioner then urges that the Rent Control and Eviction Officer did not comply with Rule 7 of the rules made under the UP (Temporary) Control of Rent and Eviction Act inasmuch as before making the allotment order he did not consult the owner. Now, Rule 7 applies only where a portion of the accommodation falls vacant and the owner is in occupation of another portion thereof. The Petitioner has filed a sketch map of the premises as Annexure I to the writ petition. It appears from the sketch map that there are two distinct portions of the premises independent of each other except that there appears to be a common opening between the two courtyards to the west and the common verandah to the east. From paragraph 4 and 6 of the counter-affidavit of S.P. Singh Chaudhry it is clear that there is a door between the two courtyards and that this door is always locked and so far as the verandah is concerned it has been divided into two parts for independent use. It would, therefore, appear that there are two distinct units of residence. It cannot be said that when Hajela vacated the part occupied by him a portion of it fell vacant and the Petitioner was

in occupation of another portion of that part. Rule 7 would apply where the accommodation occupied by a tenant is also occupied in part by the owner. In other words, it would refer to an accommodation where a portion of it is in the joint use of the owner and the tenant. Upon the facts of the instant case it cannot be said that Rule 7 applies. Consequently, no question arises of there having been any obligation upon the Rent Control and Eviction Officer to consult the Petitioner before making the impugned allotment order in favour of S.P. Singh Chaudhry. The second contention of the Petitioner is also rejected.

10. Finally, it is said that the allotment order was not an order at all in the eye of law on the date when the Petitioner's application for release of the accommodation was filed because the allotment order had not yet been communicated to the Petitioner. This ground has not been taken in the petition and I am not inclined to allow it to be raised at this stage.

11. The petition fails and is dismissed with costs.