

(1957) 08 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1240 of 1955

Shri Krishan Lal Mehra

APPELLANT

Vs

The District Magistrate, Kanpur and Others

RESPONDENT

Date of Decision : 23-08-1957

Acts Referred:

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

Citation : AIR 1958 All 393 : (1957) 27 AWR 834

Hon'ble Judges : Gopalji Mehrotra, J

Bench : Single Bench

Advocate : G.S. Pathak, for the Appellant; K.L. Misra, S.K. Agarwala and J.N. Bajpai, for the Respondent

Final Decision : Allowed

Judgement

Gopalji Mehrotra, J.—This is a petition under Article 226 of the Constitution praying that a writ of mandamus be issued quashing the order dated 28th of October, 1955, passed by the District Magistrate, Kanpur, opposite party No. 1, and directing him not to modify or cancel the allotment order passed in favour of the petitioner. The other relief prayed for is a relief for any direction which may be deemed just and proper in the circumstances of the case.

2. The facts briefly are that house No. 37/ 52, Gillis Bazar, Kanpur, is owned by one Sri Jagdish Prasad Kesarwani. The house was constructed in the year 1939, and one Sri Gauri Shan-ker Bhargava entered into a lease with the landlord in respect of the entire house and thus became a tenant of the house. Sri Bhargava, subsequently sublet portions of the house to various persons. In 1946, Bhargava Brothers, Booksellers, one Sri B. C. Bhargava in 1947 and Sri N. C. Agarwala, opposite party No. 3, all became subtenants of different portions of the house. In 1952 a suit was filed by the landlord against Sri Gauri Shankar Bhargava for arrears of rent and for ejectment on the ground that he had illegally sublet portions of the accommodation and was also in default of payment

of arrears of rent.

The suit was decreed on the 27th of January, 1955 and a decree was passed for recovery of Rs. 509-4-0, as arrears and also for possession. The tenant and the sub-tenants did not vacate the possession of the house in spite of the decree. The petitioner was carrying on business of Chemists and Druggists in shop No. 38/1, Gillis Bazar, Kanpur, as a sub-tenant on behalf of its tenant-in-chief. A decree was obtained for the ejectment of the present petitioner by the tenant-in-chief. Thus the petitioner was in need of an accommodation to carry on his business. In October, 1955 as there was a possibility of Sri Bhargava vacating the premises and there was already a decree of ejectment against him, an application was made by the petitioner for the allotment of the premises on 3rd of October, 1955, after obtaining the consent of the landlord for the tenancy of the entire accommodation.

On the 4th of October, 1955 the landlord executed his decree for ejectment against Sri Bhargava. An Inspector was deputed to enquire on the application of the petitioner for the allotment of the accommodation. On the 6th of October, 1955, he submitted his report in which he stated that the opposite party No. 3 and three others were sub-tenants of the accommodation and the petitioner was the only applicant for the allotment of the house. The landlord has no objection to the allotment in favour of the petitioner. On the 7th of October, 1955 the District Magistrate, Kanpur passed an order allotting the entire house to the petitioner. After the allotment in favour of the petitioner, he on the 12th of October, 1955 deposited rent for one month from 12th of October, 1955 to 11th November, 1955, with the landlord.

On the 14th of October, 1955 the petitioner took possession of the first floor of the house allotted to him. On the 17th of October, 1955 an objection was filed by the opposite party No. 3, Sri N. C. Agarwal, to the allotment of the house in petitioner's favour and it was prayed by him that the allotment order should be cancelled and the allotment should be made in his favour. The ground taken was that the landlord had not drawn the attention of the District Magistrate, Kanpur during the allotment proceedings in favour of the petitioner to the fact that there were old sub-tenants. The Rent Control and Eviction Officer, Kanpur thereafter passed an order on the 18th of October, 1955 staying the operation of the allotment order dated 17th October, 1955 passed in favour of the petitioner.

An Inspector was again deputed to look into the matter, who gave his report on the 21st of October, 1955, in which he reported that the opposite party No. 3 had been occupying a portion on the ground floor since 1943 as a sub-tenant and he was doing his business therein. On the 28th of October, 1955, without giving any opportunity to the petitioner an order was passed by the District Magistrate modifying the allotment order passed in favour of the petitioner and by that order the allotment of the accommodation in favour of the petitioner in respect of the portion in occupation of the opposite party No. 3 was cancelled, and the said portion was allotted to the opposite party No. 3.

It is this order of the District Magistrate which has been challenged by means of the petition. Notices were issued to the opposite parties, i.e., The District Magistrate, Kanpur, The Rent Control and Eviction Officer, Kanpur, and Sri N. C. Agarwal, subsequent allottee of the disputed portion. Counter-affidavits have been filed in this case on behalf of the opposite parties Nos. 1 and 2 and also on behalf of the opposite party No. 3. In the counter affidavit filed on behalf of the District Magistrate and the Rent Control and Eviction Officer, it is stated that the portion in occupation of Sri. N. C. Agarwal, was sublet to him in the year 1943 and that he continues to be in occupation of the said portion.

In the counter-affidavit filed by one Sri S. K. Sinha, Chief Inspector, Rent Control and Eviction Officer, Kanpur, he has further stated that on 21-10-1955, he had submitted a report and had personally informed the applicant about the application moved by the opposite party No. 3, against the allotment order made in favour of the applicant. The petitioner, according to the counter affidavit, inspected the file on 20-10-1955 and filed his objections on 21-10-1955. On the receipt of the report by Sri Sinha and after the consideration of the application of the opposite party No. 3 and the objections filed by the petitioner the District Magistrate cancelled the allotment order passed in favour of the petitioner on 28-10-1955.

The stand, therefore, taken by the opposite parties Nos. 1 and 2 is that the modification in the allotment order was made after considering the objections filed by the petitioner and it cannot be said that the petitioner had no opportunity to contest the claim of the opposite party No. 3. Further, it is stated that the District Magistrate had jurisdiction to modify his previous order. The counter-affidavit filed on behalf of the opposite party No. 3 states that it was a condition of tenancy of Sri Gauri Shanker Bhargava, that he could sublet the premises and that the opposite party No. 3 was no party to the suit for ejectment filed by the landlord against Sri G. S. Bhargava.

It is further stated in the counter affidavit that the present petitioner had applied for the allotment of the portion in occupation of the tenant-in-chief, G. S. Bhargava, and it was that portion which was allotted to him. In the allotment order passed in favour of the petitioner it was specifically mentioned "portion vacated by Sri G. S. Bhargava". The petitioner, however, subsequently made an application on 11-10-1955, pointing out that he had applied for the allotment of the entire premises and the allotment order was made in his favour for the entire building by the District Magistrate of Kanpur.

3. In paragraph 7 of the counter affidavit it is stated that the petitioner never got possession of the first floor of the house on 12-10-1955 and 14-10-1955, It is asserted that the first floor was in occupation of two sub-tenants, Sri B. C. Bhargava and Sri Suraj Lal. Sri Bhargava continued to be in possession and occupation till 12-11-1955 and Sri Suraj Lal continued to occupy it till 28-1-1956, from which date he was evicted by Sri Syed Muntajib Hussain under the order of the Second Additional Munsif, Kanpur, it is further stated that the petitioner had

full knowledge of his application dated 17th October, 1955 and filed objections to it.

4. The petitioner has urged three grounds in support of the petition. He has firstly contended that after the allotment of the premises to the petitioner tenancy right accrued to the petitioner and he could not be deprived of the said right without notice to him and without an opportunity being given to him to show cause against the proposed modification of the allotment order. He should have been given a notice and a hearing before the order of allotment under which tenancy right accrued to him could be modified. Secondly, it was contended that the petitioner having entered into possession of the accommodation) in pursuance of the allotment order in his favour, the allotment order could not be cancelled unless there was fraud, misrepresentation or concealment of facts by him.

In the present case no such fraud, misrepresentation or concealment of facts had been pointed out. It was, lastly contended that after the decree of ejectment had been passed against the tenant in chief the possession of the sub-tenants became that of trespassers and no allotment could be made in favour of the trespasser so as to affect the right of the petitioner who was the allottee of the entire premises. Section 7 (1) (a) of the Control of Rent and Eviction Act, provides that "Every landlord shall within 7 days after accommodation becomes vacant by his ceasing to occupy it or by the tenant vacating it or otherwise ceasing to occupy it or by termination of a tenancy or by release from requisition or in any other manner whatsoever, give notice of the vacancy in writing to the District Magistrate.

(b) Every tenant occupying accommodation shall within 7 days of vacation of such accommodation or ceasing to occupy it give notice thereof in writing to the District Magistrate.

(c) The notice given under Clause (a) or (b) shall contain such particulars as may be prescribed.

(2) The District Magistrate may by general or special order require a landlord to let or not to let to any person any accommodation which is or has fallen vacant or is about to fall vacant.

(3) No tenant shall sub-let any portion of the accommodation in his tenancy except with the permission in writing of the landlord and of the District Magistrate previously obtained.

(4) The District Magistrate may, on application made to him by the landlord, require a prospective tenant of any accommodation in respect of which an order is made under this section to pay the landlord an advance of rent equal :--

(a) to one month's rent where the accommodation is to be let on a monthly basis, and

(b) to one half of the yearly rent where the accommodation is to be let on a yearly basis".

5. The argument of the petitioner's counsel is, that since the decree for ejectment was passed against the tenant-in-chief his tenancy came to an end and thus the accommodation became vacant and was open to allotment. The allotment was made by the District Magistrate on 7-10-1955, in favour of the petitioner, as such the allotment could not be challenged by a sub-tenant whose possession became unauthorised since the decree for ejectment was passed against the tenant-in-chief. As regards the subsequent allotment order in favour of the opposite party No. 3, it was contended that the allotment order having been made in favour of the petitioner, the accommodation was not vacant on 28-10-1955, within the meaning of Sub-section (1) of Section 7, and thus, no allotment could be made in favour of the opposite party No. 3. It could not be disputed that after a decree of ejectment has been obtained against the tenant-in-chief the sub-tenancy comes to an end and the possession of the sub-tenants becomes that of a trespasser.

It is not necessary that a sub-tenant should be impleaded as a party to the suit for ejectment against the tenant-in-chief. This being the position on 7-10-1955, when the allotment was made in favour of the present petitioner, it cannot be urged that the District Magistrate had no jurisdiction to pass such an order of allotment on the ground that there was no vacancy. The main question to be considered is whether the District Magistrate had power to modify his earlier order of allotment in favour of the present petitioner by a subsequent order. The order u/s 7 of the Control of Rent and Eviction Act, directing the landlord to let or not to let an accommodation to the petitioner has been held to be an administrative order and it has also been held in the case of Mahabir Prasad Vs. District Magistrate, Kanpur and Others, , that the District Magistrate has power to cancel his previous order of allotment.

The contention raised by the petitioner, however, is that such a power cannot be exercised except on the ground of fraud, undue influence and misrepresentation of facts. The allottee had entered into possession in pursuance of the order of allotment and it is urged that there was no fraud or concealment of facts by the petitioner when he applied for the allotment of the premises to him so it is not within the jurisdiction of the District Magistrate to cancel, his earlier order of allotment passed in his favour. In this case it has also been urged that the petitioner had entered into possession of the ground floor of the premises in pursuance of the allotment order. It is not denied by the petitioner that he could not get possession over the entire accommodation which was allotted to him under the order of 7-10-1955.

It is also admitted by him that a small portion on the ground floor was still in possession of Shri Suraj Bali. The controversy is raised with regard to the possession of the petitioner over the portion of the ground floor occupied by Sri. B. C. Bhargava. But as I have already indicated it is admitted that the petitioner

could not get possession over the entire accommodation under the allotment order. The sub-tenants who were in occupation of the portion of the accommodation objected to the allotment in favour of the petitioner without surrendering possession in favour of the petitioner. It is not, therefore, a case where an allottee has entered into possession of the premises in pursuance of the allotment order.

6. Where an allotment is made of the entire premises and the allottee, in pursuance of such an allotment, enters into possession of the premises any allotment subsequently made in favour of a third party will not be sustained unless it is established that the earlier allotment was obtained by fraud or misrepresentation of facts, but different considerations may arise where a portion of the accommodation is admittedly in possession of the sub-tenant of the previous tenant and the allottee has not in fact and could not in fact enter into possession of the entire accommodation under the allotment order in his favour.

To my mind when it is held that the allotment order u/s 7 is an administrative order the right to cancel such an order is implicit in the nature of the order itself. The exception engrafted on the powers of the Rent Control and Eviction Officer to cancel previous allotment made by him cannot be extended so as to apply to the cases which are not governed by the decision referred to above. The power however is to cancel the order of allotment but there is no power to maintain allotment in favour of the allottee over a portion of the accommodation and to allot another portion to a third party. This will be giving a power to the District Magistrate to split up the tenancy and allot different Portions to different persons without the consent of the landlord. Whether such a power can be exercised depends on the interpretation of the words "has fallen vacant"" under Sub-clause 2 of Section 7 of the Rent Control and Eviction Act. The power of the District Magistrate to let or not to let any accommodation to any person is only in respect of the accommodation which has fallen vacant Section 7A gives an indication as to the meaning of the words "has fallen vacant." Sub-section 1 (a) of Section 7 of the Rent Control and Eviction Act, lays down that "that the landlord has to give notice after an accommodation becomes vacant by his ceasing to occupy it or by termination of tenancy." In the present case the tenancy of the tenant in chief is terminated by a decree of ejectment. The accommodation, therefore, fell vacant after the decree of ejectment as a whole and the jurisdiction to allot could be exercised by the District Magistrate in respect of the accommodation which has fallen vacant on account of the termination of the tenancy. The District Magistrate, in my opinion, had no jurisdiction u/s 7 (2) to require the landlord to let or not to let any person a portion of the accommodation the whole of which has fallen vacant.

There may be cases where the landlord may not himself like splitting up his tenancy. After a decree of ejectment against the tenant in chief has been passed the entire accommodation is open to allotment and the District Magistrate can

exercise his power of allotment in respect of the entire accommodation but he cannot divide the tenancy and allot different portions to different tenants and thus affect the right of the landlord. The landlord may himself divide an accommodation and make several portions available for allotment to different persons but the District Magistrate cannot himself force upon the landlord the division of an accommodation,

7. I would, therefore, allow this petition and set aside the order of the District Magistrate of 28-10-1955.

8. The parties will bear their own costs.