

(1979) 11 AHC CK 0025

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 479 of 1978

Smt. Raj Kumar Jain

APPELLANT

Vs

Addl. District Judge and Others

RESPONDENT

Date of Decision : 23-11-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1980) AWC 89

Hon'ble Judges : Murlidhar, J

Bench : Single Bench

Advocate : S.S. Bhatnagar, for the Appellant;

Judgement

Murlidhar, J.—This is a landlady's petition under Article 226 of the Constitution directed against the order of the District Judge as a revisional authority by which the Rent Control and Eviction Officer's order dated 15-4 - 1976 rejecting the release application of the Petitioner and allotting the premises in question to Babu Singh Chauhan, Respondent No. 3 was confirmed.

2. The brief relevant facts are these. The disputed premises are a part of the Petitioner's house " Veer Kuti situate in the town of Bijnor. This portion consists of 4 rooms. There is no dispute that a portion consisting of two rooms in the same house has been in possession of the landlady. The entrance, courtyard and latrine for the two portions are said to be joint. The land lady's husband was in Government service at Lucknow and he died in 1972. At that time one Thaplyal occupied the disputed portion as a tenant. Since 1974 when Thaplyal vacated this portion litigation about its allotment has been going on. It is unnecessary to detail the course of this litigation except that at one stage the District Judge per his appellate order dated 27-1-1976 had quashed the allotment order dated 1-g-1974 passed in favour of Respondent No. 3 observing that the disputed accommodation was a portion of the house in which the landlady was living and hence the allotment order was vitiated on account of non-compliance of Section 17(2) of U.P. Act 13 of 1972 (hereinafter called the Act). In the subsequent

proceedings it appears that on 6-4-1976 a notice was served by the Rent Control and Eviction Officer on the Petitioner's counsel asking her to nominate a person for allotment by 7-4-1976, the date fixed in the case being 8-4-1976. The counsel that very day i.e., 6-4-1976 made an application stating that the landlady was at Meerut and notice be sent to her at that address. Thereafter the release application was moved on 7-5-1976. The Prescribed Authority rejected the release application with the finding that the 2 rooms in occupation of the landlady contained some goods belonging to her but she had not been residing there and since the death of her husband in 1972 she had been living with her Chartered Accountant son at Meerut or another Junior Engineer son formerly posted at Moradabad. The Rent Control Officer also noted that the plea for release had been belatedly raised in April 1976, the earlier case having been no more than that allotment should be made in favour of her nominee. The Rent Control Officer also noted that in view of the fact that the landlady had not been residing in the portion in her possession and the same was lying locked for a long time and he had already given notice to her to nominate a person for allotment on 6-4-1976 it was not necessary to wait any further before making an allotment of the premises. The District Judge in an appeal which was treated as a revision under the transitory provision of U.P. Act 28 of 1976 confirmed these findings dittoing the reasoning on the question of release. As regards the allotment in favour of Respondent No. 3 he did not refer to or discuss Section 17(2) of the Act. He, however, observed that the Petitioner only used to store her belongings in her portion and that during the life time of her husband there was no occasion for her to live in this portion permanently and she had kept it locked for storing her belongings. Also that it appears that these rooms had been kept locked for being used occasionally as and when any member of the landlady's family visited Bijnor. After these observations the District Judge went on to conclude that no illegality could be found in the order of allotment in favour of Babu Singh Chauhan Respondent No. 3. These findings have been challenged by this writ petition.

3. The landlady's claim for release of the disputed portion has no merit. The facts and findings recited above clearly show that she in her widowed life was staying with her sons in other towns and never came and lived even in the portion in her occupation. No case was made out for release of additional accommodation of the disputed portion and no error can be found with this part of the order.

4. The main contention of the learned Counsel for the Petitioner is that mandatory provisions of Section 17(2) have been ignored by the authorities below. There is substance in this contention. This provision runs as follows:

17 (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 Sub-section (1) of Section 16 for residential purposes, the allotment of the remaining part thereof under Clause (a) of the said Sub-section (1) shall be made in favour of a

person nominated by the landlord.

5. Learned Counsel emphasised that in the previous order the District Judge had quashed the allotment order dated 1-6-1974 mainly on account of non-observance of Section 17(2) but this omission was not made good even in the present allotment order and is fatal to its validity. He has relied upon *Chandulal Chaddha v. District Judge* 1978 U.P. R.C.C. 204 in which it was laid down that in cases covered by Section 17(2) the Prescribed Authority had no discretion in the matter and had to make an allotment in favour of the landlord's nominee, but the landlord cannot delay the nomination unduly. It was further observed that the period of 21 days referred to in the proviso to Sub-section (1) was a reasonable time during which the nomination should be made and that reading the proviso along with the Sub-section (2) the position is that the landlord has 21 days' time after the disposal of his release application or after the disposal of the appeal filed by him to make the nomination of the tenant. Learned Counsel contended that in the light of this decision the enquiry dated 6-4-1976 about the nominee could not be treated to be of any consequence and the omission of the landlady to make a nomination until her release application was decided could not be the basis for allotting the premises to a non-nominee. The main reply on behalf of the Respondent to this plea was that on the findings the landlady cannot be said to be "in occupation for residential purposes" of her portion within the meaning of Section 17(2) and, therefore, that provision did not apply. I am unable to accept this contention. A building remains in occupation for residential purposes even though it may not be actually used on account of circumstances. There is no denying and this has also been observed by the District Judge that the idea was to keep this portion for the use of the landlady's family members when they visited Bijnor. Even this would be occupation for residential purposes which must include the purpose of temporary, casual or intermittent residential use. No doubt the circumstances had so developed in this case that there was no occasion to use this portion but that does not alter the fact that the portion is in the landlady's occupation and that this occupation is for residential purposes. If this position holds the allotment order in favour of Respondent No. 3 has to be struck down for non compliance of Section 17(2) of the Act. It is not possible to save the said order on the basis of the notice dated 6-4-1976 for nomination issued by the Rent Control Officer to the Petitioner's counsel. Under Rule 13 (4) of the rules framed under the Act no allotment in respect of a building covered by a release application shall be made unless such application is rejected. Therefore, the occasion for making an allotment order and consequently for making a nomination arises only after the disposal of the release application which in this case occurred on the date of the decision of the appeal by the District Judge. The Petitioner was entitled to ignore the earlier notice to nominate a tenant and stand by her right to make such nomination within 21 days of the disposal of her release application as held in *Chandulal's* case (supra)

6. As a result of the foregoing discussions the petition is partly allowed, the

orders of the Rent Control and Eviction Officer dated 15-4-1976 and the District Judge dated 21-9-1977 allotting the premises to Babu Singh Chauhan, Respondent No. 3 be quashed and the Rent Control and Eviction Officer is directed to consider the question of allotment afresh in accordance with law in the light of observations made in this order. No order as to costs.