

(1973) 03 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurdn. Case No. 1495 of 1972

Smt. Ram Adhikari Devi

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 08-03-1973

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 11(2)

Citation : AIR 1974 Patna 19 : (1974) 7 PLJR 102

Hon'ble Judges : N.L. Untwalia, C.J.; Sarwar Ali, J

Bench : Division Bench

Advocate : Prabha Shankar Mishra, Ganesh Pd. Singh and Rajendra Pd. Singh, for the Appellant; Uday Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Untwalia, C.J.—The petitioner landlady is the owner of the house in question which is situated in the town of Hajipur. She had let out the ground floor of this house in April 1972 on a rent of Rs. 110/- per month to Shri Ram-bilash Ram respondent 3 who was a Government servant posted as Assistant Superintendent of Police at Hajipur. An agreement was executed on 20-4-72 a copy of which is annexure 1. The petitioner's case is that respondent 3 informed her orally on 30-10-72 that he would be vacating the demised premises by the end of November. 1972. Actually he vacated the premises on that date, i.e. 30-11-72. The petitioner came in actual physical possession, according to her of the premises on 1-12-72. Since she needed the premises for her own occupation and use she filed an application on 2-12-72 before the District Magistrate, Vaishali. a copy of which is annexure 2. The District Magistrate rejected her application on 6-12-72 by his order contained in annexure 3. But before that he purported to allot the house to Shri J. K. Sinha respondent 2, Superintendent of Police designate to be posted at Hajipur to be the Superintendent of Police of the new district Vaishali. The petitioner filed this writ application on 8-12-72 with a prayer to quash the orders contained in annexures 3 and 4. This application was

admitted on 11-12-72 by a Bench of this Court. The prayer for stay was refused but a rule returnable within two months was issued. A supplementary affidavit was filed on behalf of the petitioner on 7-2-73 making certain corrections in her statements in the petition. In her petition she had stated that respondent 3 had given the vacation report to the District Magistrate of Vaishali on 28-11-72, but on inspection of the record it was found that that intimation was given on 27-11-72 and was received in the office of the District Magistrate on that very date.

2. The argument on behalf of the petitioner is (1) that the allotment of the premises in question could not be made by the District Magistrate, respondent 1 in favour of respondent 2 before giving such intimation to the petitioner as was required by Section 11 (2) (a) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 (hereinafter called the Act); (2) that the allotment had to be made within one week of the receipt of the notice of vacation or impending vacation by the erstwhile tenant; and (3) that no order of allotment could be made in favour of respondent 2 after the tenancy came to an end on 30-11-72.

3. A counter-affidavit has been filed on behalf of the State on 5-3-73. Although it was filed a bit late, on the facts and in the circumstances of the case we accepted it. In the counter-affidavit the assertion of the petitioner that respondent 3 had put her in possession of the premises is denied. Respondent 3 vacated the premises but did not put the petitioner in possession of it with effect from 1-12-72. On 27-11-72, according to the statement in the counter-affidavit, respondent 3 had written to respondent 1 that the former was likely to vacate the house. It is not disputed that this intimation was received on 27-11-72; respondent 1 had passed the order of allotment in the file on 1-12-72 allotting the house to respondent 2 but formal order could not be communicated before 5-12-72. The order passed by the District Magistrate on 6-12-72 is correct. The petitioner is not entitled to any relief.

4. I shall read the relevant provisions in the Act contained in Section 11 (2) (a) and (b)-

"(2) (a). Where a servant of the Government in possession of any building as a tenant intends to vacate such building, he shall give fifteen days" previous notice in writing of his intention to do so to the landlord and to the District Magistrate who shall under intimation to the landlord, within a week of the receipt of the notice, either allot the building to any other servant of the Government whom the District Magistrate thinks suitable subject to the payment of rent, and the observance of the conditions of the tenancy by such servant of the Government, or direct that the landlord shall be put in possession of the building:

Provided that when no such order is passed by the District Magistrate, the landlord shall be deemed to have been put in possession of the building.

(b) Where a building is vacated by a servant of the Government any person occupying such building other than the persons referred to in Clause (a) shall be

liable to be evicted by the District Magistrate in such manner as may be prescribed

Provided that, after a landlord has been, or is deemed to have been, put in possession of such building, he may let it to any person.

Explanation:-- In this sub-section "District Magistrate" includes Additional Deputy Commissioner of Dhanbad."

Reading all the provisions contained in Sub-section (2) of Section 11 of the Act it would be noticed that the scheme is to complete the order of allotment under intimation to the landlord before the house is vacated by a Government servant. He is required to give 15 days" previous notice in writing of his intention to vacate to the landlord as also to the District Magistrate. The District Magistrate is required within a week of the receipt of such notice to allot the building to any other servant of the Government. This he has to do "under intimation to the landlord" meaning thereby that the act of allotment and intimation should be at the same time, almost simultaneously. If the law is strictly followed then the allotment would come into effect before the house is actually vacated, and before its vacation when no order of allotment is passed by the District Magistrate the landlord under the proviso to Section 11 (2) (a) is deemed to have been put in possession of the building. Then the proviso to Sub-Clause (b) of Clause (2) of Section 11 says that the landlord may let out the building to any person if he has been put in possession or has been deemed to have been put in possession. The actual possession is delivered to the landlord if on receipt of notice from the outgoing tenant the District Magistrate does not let it out to any other Government servant. But if no order of allotment is made, in the eye of law the landlord is deemed to have been put in possession. All the difficulties can easily and safely be avoided if the law engrafted under Sub-section (2) is strictly followed and followed in, time. But in practice, due to one reason or the other difficulties are created because sometimes it is not possible to stick to the timetable prescribed in Sub-section (2) (a) and sometimes due to negligence it is not followed.

5. In earlier cases a view had been taken by this Court that failure to give 15 days" notice as required u/s 11 (2) (a) on the part of the Government servant who was going to vacate the building was fatal, as the requirement was mandatory. But this view was upset by a Full Bench decision of this Court in Shiveshwar Prasad Sinha Vs. The District Magistrate of Monghyr and Another, . The facts of the Full Bench case are that one Sri Srivastava was in occupation of the building and he vacated it on 20-12-61. On 18-12-61 he addressed a letter to the District Magistrate of Monghyr intimating him that he would be vacating the house in the morning of the 20th. A copy of this letter also appears to have been forwarded by him to the landlord. The house was actually occupied by another Government servant on 20-12-61. The formal order of allotment was made by the District Magistrate allotting the house to Sri Yadav on 23-12-61. From the facts stated in paragraph 4 of the judgment at page 878 of the Bihar

Law Journal Reports volume it would appear that a copy of the order of allotment was forwarded to the landlord also. On these facts two questions were formulated by Narasimbam. C. J. and the answers given are as follows:--

"(1) The failure to give fifteen days" previous notice, either to the landlord, or to the District Magistrate, or to both, will not invalidate the subsequent order of allotment made by the District Magistrate.

(2) The District Magistrate is not bound to give seven days" notice to the landlord before allotting the house to the succeeding Government servant."

At page 882 column 1. some observations were made by the learned Chief Justice which would show that the period of one week is not meant for intimation to the landlord of the order of allotment but then the District Magistrate is required to make an order of allotment within one week. Learned counsel for the petitioner on the basis of these observations submitted that there could not be any order of allotment without prior intimation to the landlord. But then those observations have got to be read with the ultimate decision in the case where it was held that the District Magistrate is not bound to give 7 days" notice to the landlord before allotting the house to the succeeding Government servant. In my opinion, the correct interpretation of the requirement is that the District Magistrate should make the order of allotment within a week of the receipt of the information of the impending vacation or vacation of the building by the Government servant. This he could do under intimation to the landlord, meaning thereby, as I have said above, the two acts should be at the same time. Whether the two actions have been simultaneous or at the same time or not will depend upon the facts of each case. Learned Standing Counsel No. 3 on behalf of the respondents submitted that after making the order of allotment intimation to the landlord may be given within a reasonable time. I am not prepared to accept this argument. This militates against the use of the expression "under intimation to the landlord". This to my mind, as I have said above, means that the District Magistrate should make the order of allotment and almost simultaneously give intimation to the landlord so that the landlord may get an opportunity of making his objection without the least delay on hearing of the order of allotment to another Government servant.

6. Learned counsel then submitted that the requirement of making the order of allotment within one week of the receipt of the notice is mandatory In this case admittedly the notice was received in the office of the District Magistrate on 27-11-72. The order of allotment was made on 5-12-72. Ignoring for the time being the statement made in the counter-affidavit that the order was made on 1-12-72. it was. therefore, on the 8th day. It should be struck down as being invalidated on that ground alone. I am not prepared to accept this argument as sound. In Mahesh Prasad Sinha Vs. Manjay Lal and Others, I, sitting with Ramaswami, C. J. have quoted with approval a passage from Article 656 of the Halsbury"s Laws of England, 3rd Edition. Volume 36 at page 435. The passage runs thus:

"No universal rule can be laid down for determining whether provisions are mandatory or directory; in each case the intention of the legislature must be ascertained by looking at the whole scope of the statute and, in particular, at the importance of the provision in question in relation to the general object to be secured....."

Although no universal rule can be laid down, provisions relating to the steps to be taken by the parties to legal proceedings in the widest sense have been construed with some regularity as mandatory; and it has been observed that the practice has been to construe provisions as no more than directory, if they relate to the performance of a public duty, and the case is such that to hold null and void acts done in neglect of them would work serious general inconvenience, or injustice. to persons who have no control over those entrusted with the duty, without at the same time promoting the main object of the legislature."

Applying that test it has to be held in this case that the time-limit of one week for making the order of allotment cannot be held to be mandatory. It is directory. I must, however, hasten to add that a directory provision, as repeatedly pointed out in many cases, is not meant to be violated. It is also meant to be obeyed and as far as possible strictly according to law. But there may be circumstances that a public officer is not able to follow the time-limit strictly, due to various reasons beyond his control. It would be highly unjust to say that orders passed by a public officer beyond the time-limit should be invalidated merely on that ground. It will depend upon the facts and circumstances of each case whether the delay made by the District Magistrate beyond the period of one week in making his order of allotment is reasonable or unreasonable; in other words, whether the District Magistrate has substantially complied with the directory requirement of the law or not. If it is found that there is no substantial compliance and the delay made by him in making the order of allotment was unreasonable, then the order will be liable to be struck down for not complying with the requirement of the law at all even though the law is "directory. In this case, one day's delay cannot be said to be unreasonable and, therefore, the requirement of the law was substantially complied with. The order cannot be knocked down on this ground alone.

7. Learned Standing Counsel showed to us the file containing the order dated 1-12-72. The fact that an order was made on that date finds some support from the application filed by the petitioner on 2-12-72, because in annexure 2 she prayed to the District Magistrate to cancel the requisition order. But then I do not propose to rest my judgment on the order of the District Magistrate said to have been passed on 1-12-72 and for two reasons. The first reason is that in Annexure 4, first paragraph is the order dated 5-12-72 of the District Magistrate of Vaishali signed by him. That is in the form of an order. A copy of the order has been forwarded as usual by noting below the order "a copy forwarded to so and so." I, therefore, treat the order of the District Magistrate contained in first paragraph of Annexure 4 as the order of the District Magistrate allotting the

house to respondent 2. Secondly, if I were to treat the order of allotment as having been passed on 1-12-72, then the intimation to the petitioner is on 5-12-72. One could say that the intimation on 5-12-72 is not, on the facts of this case simultaneous with the passing of the order on 1-12-72. Although the petitioner had filed her application on 2-12-72. which does indicate that somehow or other she had knowledge of the order dated 1-12-72. there are no statements in Annexure 2 which can be pinned down as fulfilling the requirement of intimation of the allotment order by the District Magistrate to the landlord. In my opinion, the requirement of giving intimation is mandatory, because without the intimation the landlord or landlady will not get any chance for making his or her representation before the District Magistrate and that would be against the spirit of the law as also against the principles of natural justice.

8. Now coming to the third and last point urged on behalf of the petitioner it will suffice to say that so long the Full Bench decision of this Court in 1965 BLJR 876 = (Shiveshwar Prasad Sinha Vs. The District Magistrate of Monghyr and Another,) holds the field this point cannot be accepted to be sound. If the requirement of giving 15 days' notice by the Government servant vacating the building is not mandatory then as soon as he vacates the building and the tenancy comes to an end the landlord in the eye of law comes in possession. No order of allotment then can be made in such a case. This would be nullifying the effect of the Full Bench decision aforesaid. The correct position of law in harmony with the ratio of the Full Bench decision is that an order of allotment can be made even if the landlord or anybody on his behalf has come in physical possession or possession in the eye of law by virtue of the deeming clause. And if that order of allotment is not otherwise bad then it will relate back to the allotment of the house from the day following the day it was vacated by the Government servant. The possession of the landlord or anybody on his behalf during the interregnum although may not be unlawful in the beginning but will be by legal fiction deemed to have vanished by allotment of the house to another Government servant. The landlord if he has come in possession by the deeming clause will be deemed to have been dispossessed by the legal fiction. If he has come in actual possession he will have to vacate or will be forced to vacate because the house will be deemed to have been allotted to the new Government servant from the day following the day on which it was vacated. In Suraj Narain Sah v. State of Bihar 1969 BLJR 506 a Bench of this Court, of which I was a member, had negatived such an argument At page 508 it was said as follows :

"If the order of allotment is to be invalidated merely because the landlord or anybody else has come in possession, it will, from one point of view, again be laying down that giving of fifteen days' notice is mandatory."

9. Learned counsel for the petitioner endeavoured to persuade us to refer this case to a Full Bench of five Judges, because in his submission the Full Bench decision of this Court in S. P. Sinha's case, 1965 BLJR 876, required reconsideration. We did not feel persuaded to adopt this course as. in our

opinion, two views are possible on the question and it is not expedient to constitute a larger Bench for reconsideration of the view expressed by the Full Bench. That decision is binding on us.

10. Learned counsel for the petitioner ultimately submitted that respondent 2 has not occupied the house yet, although no order of stay was made at the time of the admission of this writ application and has not paid any rent for any period. This grievance of the petitioner has got force. In the view which I have expressed above, the premises in question must be deemed to have been allotted to respondent 2 from 1-12-1972. He is, therefore, liable to pay rent from that date. If I were to take the view that the order of allotment to a new Government servant comes into effect from the date of the order, as in this case on 5-12-1972. then there would be no escape from the position that the petitioner came in possession either actually or by virtue of the deeming clause on 1-12-1972. It is difficult thereafter to take the view that she must be deemed to have been out of possession from 5-12-1972. If for a few days she is allowed to be in actual possession or deeming possession then the proviso to Sub-clause (b) of Section 11 (2) would clearly be attracted and it would be open to her to let out the house to anybody else or to "occupy it herself. I am, therefore, clearly and definitely of the view that the premises in question must be deemed to have been allotted to respondent 2 from 1-12-1972. If he does not occupy the premises within a reasonable time to be fixed by us in this order and does not pay the rent for the period which will fall due by that time, then the order of allotment must be deemed to have spent its force and no fresh order of allotment can be made by the District Magistrate. Vaishali. allotting the house to any other Government servant, as for all this period then the petitioner will be deemed to be in possession. It has, however, to be made clear that if respondent 2 fulfils the condition which we are imposing in this order and occupies the premises. then, of course, the law engrafted in Section 11 (2) (a) will again be attracted for future allotments. On the facts and in the circumstances of the case, I direct respondent 2 to occupy the premises latest by 31-3-1973, and pay rent for the month of December, 1972 and January and February 1973 at the rate of Rs. 110/- per month by that date to the petitioner. If he fails to fulfil the condition imposed in this order, then it will be deemed that he does not want to avail of the allotment order made in his favour and the petitioner will thereafter either occupy the premises herself or let it out to anybody else.

11. In the result, this writ application is dismissed subject to the observations made and directions given to respondent 2. There will be no order for costs.

Sarwar Ali, J.

12. I agree.