

**(1955) 08 AHC CK 0034**  
**In the Allahabad High Court**  
**Case No : Misc. Writ No. 81 of 1955**

Sri Gopi Nath Agarwal and Others

APPELLANT

Vs

The Rent Control and Eviction Officer and Others

RESPONDENT

**Date of Decision :** 18-08-1955

**Acts Referred:**

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

**Citation :** (1955) 25 AWR 524

**Hon'ble Judges :** Gopalji Mehrotra, J

**Bench :** Single Bench

**Advocate :** S.N. Kackar, for the Appellant;

**Final Decision :** Dismissed

## **Judgement**

Gopalji Mehrotra, J.—This is an application under Article 226 of the Constitution praying that a writ of Certiorari be issued to quash the order dated 23rd November, 1954 as well as subsequent intimation of the orders dated 3rd December, 1954.

2. The Petitioner are the sons of Rameshwar Prasad. House No. 27, Jawahar Square, Allahabad was owned by Sri Kalidin and after his death is now owned by his two sons Sri Hari Ram and Ram Sevak. They are arrayed as opposite parties to these proceedings. A part of the house consisting of a 6 door shop was let out to Sri Rameshwar Prasad Agarwal the father of the applicants on a monthly rent of Rs. 125. There was a partition between the applicants and their father and thereupon in 1947 it was decided that three doors out of the 6 doors should be partitioned and the applicant No. 3 should carry on his individual business in these shops. The remaining half portion of the shop was given to the applicants Nos. 1 and 2 for their joint business. On 5th September, 1951 applicants Nos. 1 and 2 agreed among themselves that they should divide the accommodation between themselves by a temporary partition wall. The rent of the various portions were paid after partition by the applicants who were occupying different portions to the father who paid it to the landlord. In September, 1952 the

landlord filed a suit for ejectment and arrears of rent wherein the applicants were impleaded as Defendants on the ground that they were subtenants and the tenants in chief had no right to sublet. On 15th September, 1953 the Munsif decreed the suit for arrears of rent but the relief for ejectment was rejected on the ground that the notice was not properly given. It is alleged that the Munsif found that Rameshwar Prasad himself had left the shop and the portions of the said shop were in the occupation of the sub-tenants. An appeal was filed against the decision before the District Judge by the landlord. On 9th August, 1954 the appeal was dismissed by the District Judge. On 1st September, 1954 Rameshwar Prasad Agarwal the father of the applicants made an application to the Rent Control and Eviction Officer in which he prayed for partitioned portions of the shops to be allotted to the sons as they were in actual possession of these portions since 1947. The Rent Control and Eviction Officer passed an order of allotment as prayed for in the application of Rameshwar Prasad in favour of the applicants. On the same date the present applicants applied for allotment. The Rent Control Inspector was ordered to report on the application of Sri Rameshwar Prasad and on 7th September, 1954 the Rent Control and Eviction Officer directed the Assistant Rent Control and Eviction Officer to discuss the matter with him. On the 10th of September allotment orders were passed in favour of the applicants. On 17th of September, 1954 an objection was filed on behalf of Ram Sevak step brother of Hari Ram opposite party No. 3 to the allotment orders passed by the Rent Control and Eviction Officer. The Rent Control and Eviction Officer heard the application filed by the landlord and counsel for the parties and passed an order cancelling the allotment orders on the ground that he had passed the said orders under some misunderstanding. The operative portion of the order of cancellation reads as follows:

The owner has now applied that this allotment is illegal and will prejudice his case for ejectment and subletting. The parties were called and their arguments were heard at length. After going through the records and their arguments I have come to the conclusion that by issuing allotment orders in favour of the sons of Sri Agrawal the case of the owner will be prejudiced. It has already been held by the Civil Court that the case is of sub-letting and if it is a case of sub-letting then under law he can be ejected. Sri Agarwal in order to shield himself and his sons from the suit of ejectment under sub-letting applied to this office for allotment. The allotments were made on misunderstanding. I am therefore of the opinion that the allotment order should not have been made and hence cancel the allotment order.

3. The contention of the applicants is that the allottees were in possession of the portion allotted to them, when the allotment order was made and unless the Rent Control Officer found that the allotment order itself had been obtained by fraud or misrepresentation he had no power to cancel the order of allotment. Reliance has been placed on the case of Mahabir Prasad v. The State of U.P. A.W.R. (H.C.) 384. It was observed in this case that the Rent Control and Eviction Officer can modify or cancel his previous order of allotment but this

power can be exercised so long as the allottee acting in pursuance of the order does not take possession of the accommodation. After the possession had been taken over by the allottee in pursuance of the allotment order the Rent Control and Eviction Officer's power comes to an end except in a case where the order was obtained by fraud or misrepresentation of facts or some other undesirable method, because the accommodation is no longer vacant nor is about to fall vacant. In cases where the allottee enters into possession acting under the allotment Order the Rent Control and Eviction Officer's jurisdiction to cancel his previous order of allotment may come to an end but in the present case the applicants who were the allottees were in possession over the house since 1947. The cancellation of the order of allotment is not likely to affect their possession. Their possession will only be disturbed after the land-lord has obtained a decree for ejectment. It cannot therefore be said that the allottees acting under the allotment order obtained possession of the premises so as to effect the jurisdiction of the Rent Control and Eviction Officer to cancel the order of allotment. Even in cases where the allottee has in pursuance of the order of allotment entered into possession the Rent Control and Eviction Officer has a right to cancel his order of allotment if it has been obtained by fraud, or misrepresentation. But in cases where the allottee entered into possession not in pursuance of an order of allotment but was in possession from long before the order of allotment was made in his favour the Rent Control and Eviction Officer has power to cancel his previous order of allotment, even otherwise than on the ground of fraud or misrepresentation. As has been held in the case referred to above the Rent Control and Eviction Officer while passing an order of allotment u/s 7 of the Rent Control and Eviction Act does not act judicially. He acts administratively and it is open to him to modify his previous order of allotment. Another contention of the apposite parties which has force is that so long as the suit for ejectment is not decreed the tenancy of the tenant-in-chief Rameshwar Prasad Agarwal did not terminate and the possession of the applicants over the house must be treated to be for and on behalf of the tenant-in-chief and it cannot therefore be said that the order of allotment was legal as there was no vacancy actual or contemplated on the day when the order of allotment was passed.

4. There is therefore no force in this petition and it is rejected with costs.