

(1955) 08 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 180 of 1955

Sri Lal Bansal

APPELLANT

Vs

The Rent Control and Eviction Officer and Others

RESPONDENT

Date of Decision : 05-08-1955

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1955) 25 AWR 530

Hon'ble Judges : Gopalji Mehrotra, J

Bench : Single Bench

Advocate : S.N. Kacker, for the Appellant; Bhagwan Das and N.D. Pant, J.S.C., for the Respondent

Final Decision : Allowed

Judgement

Gopalji Mehrotra, J.—This is an application under Article 226 of the Constitution praying that a writ of Certiorari be issued quashing the order dated 12th March, 1955 passed by the Rent Control and Eviction Officer, Agra and the order dated 26th of April, 1954 passed by the Additional Commissioner, Agra Division. A further relief in the nature of a writ of prohibition has been prayed for directing the opposite party No. 1 not to proceed with proceedings u/s 7-A of the Rent Control and Eviction Act.

2. The premises in dispute No. 1753-A, Pir Kalyani, Police Station Hariparbat, district Agra belong to one Messrs. Janki Das Govind Das. The said Messrs. Jankidas Govind Ram became insolvent and the premises became vested in Sri B.K. Dar, the Official Receiver who has been impleaded as opposite party No. 2 to this petition. The premises were occupied by one Raghunath Das Goyal as a tenant. The allegation of the Petitioner in the affidavit filed in support of the petition is that sometimes in January, 1954 he was informed that Sri Raghunath Das Goyal was likely to vacate the premises and on 18th January, 1954 he made an application for the allotment of the house in his favour. The Rent Control and

Eviction Officer after due enquiry ordered the allotment of the premises in favour of the Petitioner and the allotment order was passed on the 30th January, 1954. The premises were going to be vacated by Raghunath Das Goyal on the 4th March, 1954 and the applicant approached the Rent Control and Eviction Officer for the issue of the allotment order and on the 5th March, 1954 he took possession of the premises in pursuance of the aforesaid order. On the 6th March, 1954 opposite party No. 3 Sri Shyam Babu Gupta who claimed to have purchased the half portion of the disputed house from the Official Receiver threatened to dispossess the applicant. A first information report was thereafter lodged by him. After some time opposite party No. 3 did purchase half of the premises in question from the Official Receiver, and the other half in which certain machineries were fixed up were purchased by opposite party No. 4. An oral complaint was thereafter made by opposite party No. 2 the Official Receiver to the District Magistrate. On the 6th of March an order was issued by the Rent Control and Eviction Officer Agra to the effect that as a complaint had been made to the District Magistrate by the Official Receiver the allottee was directed not to take possession of the accommodation till further orders. The Petitioner in response to the notice stated that he had already taken possession of the premises. Police Constables were immediately deputed to the premises in question under the direction of the District Magistrate to prevent the deponent from taking possession of the premises in future. The Petitioner had already informed the Rent Control and Eviction Officer on the 5th of March that he had taken possession, and on the 6th of March when the constables had been deputed the Petitioner was already in possession of the premises. The Chief Inspector after making an enquiry submitted a report on the 7th of March, 1954. The report has been filed along with the affidavit as annexure B to the affidavit. On the 8th March the Petitioner asked for the adjournment on furnishing medical certificate and when the matter was taken up on the 8th March, 1954 by the Rent Control and Eviction Officer an application was made by the opposite party No. 3, the purchaser of half of the portion of the premises for cancellation of the allotment order in favour of the deponent and for the allotment of the premises in his favour. In paragraph 24 of the affidavit it is stated that the opposite party No. 2 was also present and also personally presented an application, the concluding portion of which reads as follows:

Under these circumstances I would ask you to cancel the allotment order in favour of Sri Lal Bansal and to order him to remove the goods if he has placed any failing which action may be taken against him.

3. On the 12th of March, 1954 the Rent Control and Eviction Officer passed an order cancelling the allotment order in favour of the deponent and further ordered notice u/s 7-A of the Rent Control and Eviction Act to be issued to the deponent immediately. Hearing was fixed for the 13th of March. On 29th April, 1954 the Additional Commissioner rejected the revision application against the order of 12th March, 1954 on the ground that there was no illegality and irregularity in the procedure. On these facts by the present petition the two

orders, one of the Rent Control and Eviction Officer dated 12th March and that of the Commissioner in revision dated 29th of April, 1954 are sought to be quashed. Two counter-affidavits have been filed. In the counter-affidavit filed on behalf of the opposite party No. 3 it is stated that the premises were allotted to the Petitioner on misrepresentation made by him as regards two material facts. Firstly, that Sri Raghunath Goyal had vacated the premises and secondly, that the landlord had agreed to let out the premises to him. The allotment order of the 30th January, 1954 was therefore obtained by the misrepresentation and fraud committed by the Petitioner. It is also stated in the counter-affidavit that the applicant never got possession as alleged. It was only on the 6th of March, 1954 that the Petitioner won over the Chaukidar of Sri Raghunath Das Goyal, placed some bamboos and ballis in the premises in dispute although Sri Goyal was still in the premises in question. In the affidavit filed on behalf of the Rent Control and Eviction Officer it is stated that the order of the Rent Control and Eviction Officer dated 30th January, 1954 by which the house was allotted to the Petitioner was obtained by the misrepresentation that the premises were vacant and the landlord was willing to let out the premises to the applicant. This statement was accepted as there was no application for allotment of these premises. On 6th of March the Additional District Magistrate informed the Rent Control and Eviction Officer that Sri B.K. Dar, Official Receiver, had reported to him that the applicant had obtained the allotment order by fraud and misrepresentation and was trying to obtain possession. Immediately an order was passed restraining the Petitioner from taking possession and he was asked to appear on the 8th of March. Police was deputed to keep a watch. On the 8th of March all the persons were heard at length. Raghunath Das Goyal stated that he had not vacated the premises and after considering the facts fully the order of the 30th January, 1954 was set aside by him. Thereafter proceedings u/s 7-A were started and after giving due notice to the applicant an order was passed allotting the premises to the opposite party No. 3. A revision was filed against the order which was dismissed on 29th April, 1954. A suit was filed thereafter in the court of Munsif, Agra in which a temporary injunction was obtained but by a subsequent order dated 15th February, 1955 the Additional Civil Judge set aside the order of the Munsif vacating the injunction.

4. Two points have been urged by the Petitioner. Firstly it is contended that the order passed by the Rent Control Officer on the 12th March cancelling the allotment order of 30th January, 1955 is a mala fide order and can be quashed by this Court under Article 226 of the Constitution. It has been held by a bench of this Court, Mahabir Prasad v. District Magistrate Kanpur 1955 A.W.R. (H.C.) 384, that an order of allotment u/s 7-A is an administrative order and can be cancelled by a Rent Control and Eviction Officer subsequently. The power however to cancel cannot be exercised after the allottee had entered into possession in pursuance of an allotment order and the order had not been obtained by the misrepresentation or fraud. In the present case one of the controversies raised between the parties is as to whether the Petitioner had

obtained possession in pursuance of the allotment order. The allegation of the applicant is that he was informed by Sri Raghunath Das Goyal that he was to leave the premises on the 4th March. He approached the Rent Control and Eviction Officer for the issue of the order on the 5th. After having obtained the allotment order he entered into possession on the 5th March in pursuance of the said order and intimated the fact that he had entered into possession to the Rent Control and Eviction Officer on the same day. After the police constables had been posted further enquiry had been ordered to be made by the Rent Control and Eviction Officer. The Inspector reported that he found seven or eight persons of the allottee sleeping in the house and at the time when he inspected the house on the 6th March at 6 a.m. he found bamboos, ballis and tattar stored in the godown. According to him there were about 3,000 bamboos 250 ballis and about 50 takhats. He immediately called Sri Lal Bansal who stated that he had entered into possession. This report clearly shows that on the date when the application had been filed for the cancellation of the allotment order and for re-allotment of the house in favour of the opposite party No. 3 the Petitioner had entered into possession and therefore the allotment order could not be cancelled unless it had been obtained by fraud or misrepresentation. The Rent Control and Eviction Officer has in his order of the 12th March has stated that under the circumstances the allotment order had been obtained by fraud and misrepresentation and that in his opinion the allotment order was obtained need be cancelled. He further observed that "equity demanded that the property which has been purchased by a person at a huge price should be allotted to the purchaser." The misrepresentation pointed out by him in his order is that the Petitioner on the date when the allotment order had been passed wrongly stated that the premises were vacant and that the landlord had consented to his occupying the premises. By agreement of the parties a copy of the proceedings of the 23rd January, 1954 before the Rent Control Officer has been placed before me and it reads as follows:

Applicant represented. Submitted that the owner would deliver possession when allotted and that there is no dispute about the premises. Since there are no claimants allotted to Sri S.L. Bansal.

5. It is urged by the Standing Counsel that the proceedings show that the allotment order in favour of the Petitioner was made as he had represented that Raghunath Das Goyal had vacated the premises and that the landlord had consented to give possession to the Petitioner. As regards the first question on which the Petitioner is alleged to have made the misrepresentation, the Rent Control and Eviction Officer in his order dated 12th March, 1954 has not in so many words found that the allotment would not have been made by him if the Petitioner had not stated to him that on the date when the allotment order was passed Raghunath Das Goyal had vacated the premises. The jurisdiction to pass an order of allotment arises not only where the premises are actually vacant but also in the case where they are likely to be vacant in future. If in the present case Raghunath Das Goyal did in fact vacate the premises subsequently and the

Petitioner entered into possession in pursuance of the allotment order in his favour it cannot be said that there was any misrepresentation of material facts made to the Rent Control and Eviction Officer and that the Rent Control and Eviction Officer would not have made an allotment in his favour if such a statement had not been made. The Rent Control and Eviction Officer in his order dated 12th of March has considered at great length the question as to how the Petitioner obtained possession of the property. He has not considered the question whether on the date when the allotment order was passed the Petitioner Raghunath Das Goyal was in possession of the property or not. He has remarked in his order that "even if the contention of the Petitioner is accepted that he took possession from the outgoing tenant this delivery of possession by the said tenant was irregular and invalid". u/s 7 no direction was issued to the outgoing tenant to give possession to the incoming tenant and the possession could have been validly delivered by the Official Receiver the owner of the premises. The Petitioner according to the Rent Control and Eviction Officer should have approached the Official Receiver and it was deliberately avoided by the Petitioner and as such the possession was obtained illegally". I do not think there is any warrant for such an interpretation of Section 7(1) of the Rent Control and Eviction Act. Section 7(1) of the Act no doubt provides that a direction to let or not to let an accommodation is to be issued to the owner but the question to be considered is whether on the date when the allotment order was passed the Rent Control and Eviction Officer had jurisdiction to pass an allotment order or not. The jurisdiction to make an order of allotment depends upon the actual vacancy of the said premises or the likelihood of its vacancy. The order of allotment cannot be set aside on the mere ground that after the allotment order had been passed the Petitioner entered into possession peacefully with the consent of the outgoing tenant without approaching the landlord.

6. Even assuming that the subsequent entry of the Petitioner was not in accordance with the provisions of the Act that will not invalidate the order of allotment passed on the 30th January, 1955.

7. The second misrepresentation found by the Rent Control and Eviction Officer to have been made by the Petitioner is that he had stated that the landlord had agreed to let out the said premises to him. I have quoted the proceedings of the 29th March and the only submission which appears to have been made by the Petitioner was that the owner would deliver possession if allotted and that there was no dispute about the premises. Such a submission of the Petitioner does not necessarily mean that the landlord had previously agreed to let out the premises to the Petitioner. The jurisdiction of the Rent Control and Eviction Officer to make the allotment does not depend on the consent of the landlord. In cases only where the landlord is occupying a portion of the house the wishes of the landlord are to be considered before making an allotment of the premises. In no other circumstance under the Act landlord's consent is prerequisite for the passing of an order of allotment. Under those circumstances it cannot be said that the order of allotment could not have been passed if such a representation had not been

made by the Petitioner. It cannot therefore be said that the order of the 30th January, 1951 had been obtained by fraud or misrepresentation. It is urged by the Standing Counsel that as the order of the cancellation of allotment order is an administrative order this Court will not examine the order and cannot scrutinise the reasons for such an order. The finding of the Rent Control and Eviction Officer that the allotment order had been obtained by misrepresentation and fraud is to be accepted and unless the order was without jurisdiction or that it was against any principle of natural justice inasmuch as no opportunity was given to the Petitioner to show cause against the proposed order of cancellation it could not be set aside. The order of the Rent Control and Eviction Officer has been passed on the application of opposite party No. 3 made on the 8th of March. It has been held by this Court in the case referred to above that the power of cancelling his previous allotment order does not subsist after the allottee had entered into possession unless the order of allotment itself had been obtained by fraud or misrepresentation. The question therefore whether the order of allotment had been obtained by fraud or misrepresentation is a question on the determination of which depends the jurisdiction of the Rent Control and Eviction Officer to cancel his previous order, and when determining this question, the Rent Control Officer acts quasi judicially. The order passed by the Rent Control Officer can therefore be examined by this Court in a writ petition and if on the face of it, it is erroneous it can be interfered with by this Court. In the case of Chandrabhan v. Rent Control and Eviction Officer, Agra 1953 A.W.R. (H.C.) 434 it was observed by a Bench of this Court "when the Rent Control and Eviction Officer decides a question of fact the result of which determines the right of a person to the benefit of Rule 4, he acts in a quasi judicial capacity." In the present case also the order of cancellation may itself be an administrative order but the decision of the Rent Control Officer on the question of fact whether the allotment order of 30th January, 1954 was obtained by fraud or misrepresentation on which depends the jurisdiction of the Rent Control and Eviction Officer to cancel his previous order is a decision given by him when he acts in a quasi judicial capacity. In my opinion therefore the decision of the Rent Control and Eviction Officer of the question that the order of allotment had been obtained by fraud and misrepresentation is amenable to a writ of Certiorari by this Court. As I have already pointed out in the earlier part of my judgment the decision of the Rent Control and Eviction Officer is erroneous on the face of it. Apart from this on the examination of the circumstances under which this order was passed it is plain that the order was not the result of the exercise of the Rent Control Officer's independent discretion but was based on the oral complaint made by the Officer Receiver to the Additional District Magistrate and further it has also been prompted by the consideration that the rights of the purchaser who invested a large money would be affected by maintaining the allotment order in favour of the Petitioner. The order is based on extraneous considerations, considerations which are not relevant to the matter under enquiry and as such the order is also liable to be quashed. As I have held that the order cancelling the allotment order of the 30th January, 1954 is invalid and

should be quashed. The allotment order in favour of opposite party No. 3 cannot stand. The possession of the Petitioner will be under the allotment order of the 30th January, and on the 8th March when the allotment was made in favour of opposite party No. 3 the premises were not vacant. On my judgment that the allotment order in favour of the Petitioner dated 30th January, 1954 was not rightly cancelled and still subsists and that the allotment in favour of the opposite party No. 3 is without jurisdiction, subsequent proceedings u/s 7-A cannot be held to be valid and must be quashed. In this view of the matter it is not necessary to go into the other questions raised by the Petitioner that the proceedings u/s 7-A cannot be used to give possession to a purchaser.

8. I, therefore, allow this petition, quash the order of the Rent Control and Eviction Officer, Agra dated 12th March and direct the opposite party not to proceed u/s 7-A against the Petitioner. But I make no orders as to costs.