

(1964) 07 AHC CK 0010
In the Allahabad High Court
Case No : Special Appeal No. 164 of 1959

State of Uttar Pradesh and Others

APPELLANT

Vs

Ram Narain Lal and Another

RESPONDENT

Date of Decision : 24-07-1964

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7(2), 7A
Uttar Pradesh (Temporary) Control of Rent and Eviction Rules, 1949 — Rule 3, 4

Citation : AIR 1966 All 62

Hon'ble Judges : Jagdish Sahai, J;G.C. Mathur, J

Bench : Division Bench

Advocate : R.K. Srivastava and S.S. Verma, for the Respondent

Final Decision : Allowed

Judgement

G.C. Mathur, J.—This is a special appeal against an order of a learned single Judge allowing Writ Petition No. 1437 of 1957 and quashing the order of allotment dated March 27, 1957, the order dated April 1, 1957, u/s 7-A of the U. P. Control of Rent and Eviction Act (hereinafter referred to as the Act) made by the Rent Control and Eviction Officer, Pilibhit and the order of the Commissioner dated May 9, 1957, in revision.

2. The respondent No. 1, Ram Narain Lal is the owner, of a shop at Pilibhit. One Harish Bajpai was the tenant of this shop. The tenant vacated the same on or about December 30, 1956. Thereafter on January 5, 1957, the respondent landlord wrote to the Rent Control and Eviction Officer intimating that the shop had become vacant and asking that it be released in his favour. This application was received by the Rent Control and Eviction Officer on January 5, 1957. No allotment order was made by the Rent Control and Eviction Officer till March 27, 1957, when he allotted the shop in favour of respondent No. 2, Mohammad Shafi. In due course the Rent Control and Eviction Officer initiated proceedings u/s 7-A of the Act for the eviction of respondent No. 1. Respondent No. 1 filed certain objections to the proceedings u/s 7-A. Those objections were rejected by

an order dated April 1, 1957. Against that order the petitioner filed a revision before the Commissioner, but the revision was also dismissed by an order dated May 9, 1957.

Thereupon the petitioner filed a writ petition before this Court. The only point that appears to have been raised before the learned single Judge by respondent No. 1 was that the order of allotment was without jurisdiction as it was passed more than thirty days after the intimation of vacancy was received by the Rent Control and Eviction Officer. This contention found favour with the learned single Judge with the result that he allowed the writ petition and quashed the impugned orders.

3. The learned single Judge has held that Rule 3 of the Control of Rent and Eviction Rules, 1949 limited the time within which the District Magistrate could make an order of allotment to thirty days and that since in the present case the order of allotment was not made within this period the District Magistrate had forfeited his right to make any order of allotment. The appellants contend that the view of the learned single Judge that the District Magistrate lost all jurisdiction and power to make an order of allotment after the expiry of thirty days from the date of receipt of the notice of vacancy is erroneous and that Rule 3 did not and could not take away the jurisdiction of the District Magistrate to make an order of allotment even after the expiry of thirty days. In support of their contention the appellants rely upon the decision of a Division Bench of this Court in *Ram Autar Vs. Rent Control and Eviction Officer, Jhansi and Others*, . This case fully supports the contention of the appellants. It has been held in this case that though it is desirable that an order of allotment should be made within thirty days, the District Magistrate or the Rent Control and Eviction Officer does not lose power or jurisdiction to make an order of allotment even after the expiry of that period.

Learned counsel for the respondent No. 1 has brought to our notice certain observations made in *Dr. A.C. Dass v. T. R. O. and D. S. O.*, Lucknow 1962 All LJ 553. These observations are to the same effect as the decision of the learned single Judge under appeal; but in our opinion these observations are mere obiter dicta and have no binding force. Learned counsel for respondent No. 1 also referred us to the decision of a Full Bench of this Court in *Ram Surat Singh Vs. Rent Control and Eviction Officer and Another*, but in our opinion the Full Bench decision is not relevant to the decision of the question before us.

4. We are clearly of the view that the District Magistrate or the Rent Control and Eviction Officer is not deprived of his power and jurisdiction to pass an order of allotment even after the expiry of a period of thirty days from the date of receipt of the intimation of vacancy. There are two reasons for taking this view. The first is that if Rule 3 were to be interpreted as cutting down the power of the District Magistrate to make an allotment and limiting the exercise thereof to thirty days from the date of receipt of the intimation of vacancy, it would result in a conflict between Rule 3 and Section 7(2) of the Act and such an interpretation should be

avoided. Section 7(2) of the Act confers power upon the District Magistrate to make orders of allotment. The Act places no restriction as to the time within which this power has to be exercised. The rules have been made u/s 17 of the Act to give effect to the purposes of the Act. The rules cannot cut down the power or jurisdiction conferred upon the District Magistrate by the Act.

If the rule were interpreted in the manner in which the learned single Judge has done, then it would be curtailing the jurisdiction of the District Magistrate which has been conferred upon him by Section 7(2) and there would arise a conflict between the provisions of Section 7(2) of the Act and Rule 3 which may render Rule 3 invalid. An interpretation which avoids such conflict should be adopted. Accordingly, Rule 3 should be interpreted as directing that the District Magistrate should make an order of allotment, as far as possible, within thirty days of the receipt of intimation of vacancy and it should not be interpreted to include a negative injunction that the District Magistrate shall not make any order of allotment after the expiry of these thirty days.

5. The second reason is that if Rule 3 is to be interpreted as faking away the power and jurisdiction of the District Magistrate to make any order of allotment after the expiry of thirty days from the date of receipt of the intimation of vacancy, Rule 4 would become ineffective and unworkable. Rule 4 provides that if the landlord receives no notice from the District Magistrate within thirty days of the receipt by the District Magistrate of the intimation of vacancy, the landlord may nominate a tenant and the District Magistrate shall allot the accommodation to his nominee unless, for reasons to be recorded in writing, he forthwith allots the accommodation to any other person. Rule 4 clearly provides for the allotment of the accommodation by the District Magistrate either in favour of the nominee of the landlord or in favour of some other person after the expiry of thirty days from the date of receipt of the intimation of vacancy. If under Rule 3 the District Magistrate had already lost his power and jurisdiction to make an allotment after the expiry of the thirty days, it would not be possible for him to make the order of allotment contemplated by Rule 4. Rules 3 and 4 must be read together and a harmonious construction should be adopted so that both the rules can be worked effectively. Reading the two rules together, it is clear that normally the District Magistrate shall make the order of allotment within thirty days of the receipt of the intimation of vacancy, but if he fails to do so then, even though his power and jurisdiction to make an order of allotment continues, he can only make an order of allotment in accordance with the provisions of Rule 4. Rule 4 does not confer any fresh power or jurisdiction upon the District Magistrate to make an order of allotment. The power to be exercised is still the same power which is conferred by Section 7(2) of the Act.

6. For these reasons we respectfully agree with the decision of the Division Bench in Ram Autar Vs. Rent Control and Eviction Officer, Jhansi and Others, and held that the District Magistrate had jurisdiction to make an order of allotment even after the expiry of thirty days from the date of receipt of the notice of

vacancy by him. Accordingly, the allotment order made by him on March 27, 1957, and the order u/s 7-A of the Act made on April 1, 1957 were perfectly valid and legal orders. The order of the Commissioner dismissing the revision filed by respondent No. 1 was also a legal and valid order.

7. In the result, we allow this appeal, set aside the order of the learned single Judge and dismiss the writ petition filed by respondent No. 1. The appellants will be entitled to their costs of this appeal and of the writ petition from respondent No. 1.