
(1957) 08 AHC CK 0012
In the Allahabad High Court
Case No : Special Appeal No. 232 of 1955

The Rent Control and Eviction Officer, Etah	APPELLANT
Vs	
Asharfi Lal and Others	RESPONDENT

Date of Decision : 28-08-1957

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh (Temporary) Control of Rent and Eviction Rules, 1949 — Rule 4

Citation : AIR 1958 All 153 : (1957) 27 AWR 763

Hon'ble Judges : Mootham, C.J.;Srivastava, J

Bench : Division Bench

Advocate : N.D. Pant, for the Appellant; D. Sanyal, for the Respondent

Final Decision : Dismissed

Judgement

Mootham C.J.

1. This is an appeal from an order of Mr. Justice Brij Mohan Lall dated the 9th February 1955 directing the issue of a writ of mandamus.

2. The facts so far as they are necessary for the disposal of the appeal can be stated very shortly. On the 15th September 1954 certain premises in Kasganj belonging to the third respondent fell vacant and the first respondent applied forthwith to the Rent Control and Eviction Officer that they be allotted to him. This application was made with the approval of the landlord who endorsed his consent thereon. Three days later, on the 18th September, the landlord sent an intimation to the appellant, the Rent Control and Eviction Officer, u/s 7 (1) (a) of the U. P, (Temporary) Control of Rent and Eviction Act, 1947, that the premises had fallen vacant and requesting that they be allotted to the first respondent. No allotment was however then made, and on the 23rd October 1954 the landlord wrote to the appellant pointing out that 30 days had expired since intimation had been given to him of the vacancy without an allotment order having been made and repeating his request that the premises be allotted to the first respondent.

The appellant however took no action in the matter for four months and then, on the 24th November, 1954 he allotted the premises to the second respondent. The first respondent thereupon filed a petition under Article 226 of the Constitution in which he prayed that the order of allotment in favour of the second respondent be quashed on the ground that the appellant had disregarded the provisions of Rule 4 of the Rules made under the Act. That Rule reads thus:

"If the landlord receives no notice from the District Magistrate within thirty days of the receipt by the District Magistrate of the intimation given by the landlord u/s 7 (1) (a), the landlord may nominate a tenant and the District Magistrate shall allot the accommodation to the nominee unless for reasons to be recorded in writing, he forthwith allots the accommodation to any other person."

The learned Judge held that this rule had been disregarded and that the first respondent, the person nominated by the landlord, was entitled to file the petition. The order of allotment was quashed and the appellant was directed to allot the premises to the first respondent.

3. Against that order an appeal has been filed by the State Government, and the only point which had been argued before us is whether Rule 4 confers upon the person nominated as a tenant the right to move this Court by a petition under Article 226 of the Constitution if the provisions of the rule are disregarded by the Rent Control authorities.

4. We have heard learned counsel for the appellant and for the second respondent and we are of opinion that the view taken by the learned Judge is right. If the District Magistrate does not make an order of allotment within 20 days of the receipt by him of an intimation by the landlord of the premises having fallen vacant he is bound to allot the premises to the tenant nominated by the landlord unless he, for reasons to be recorded, forthwith allots the premises to some other person.

Rule 4 confers upon the landlord the right to nominate a tenant and if, as in the case before us, that right is exercised, then in our opinion the nominee had a right to have an allotment order issued in his favour unless the District Magistrate makes an immediate allotment, for reasons stated, to another person. If the District Magistrate acts in contravention of the Rule the allottee is an aggrieved person and is entitled to move this Court for relief under Article 226. No other ground was argued on behalf of the appellant.

5. This appeal accordingly fails and is dismissed.