

(1967) 04 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3505 of 1966

Vishwamitra and Another

APPELLANT

Vs

The Rent Control and Eviction Officer and Others

RESPONDENT

Date of Decision : 27-04-1967

Acts Referred:

- Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 2(h), 7(1) (a)
- Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 2(h), 7(1) (a)
- Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 2(h), 7(1) (a)

Citation : (1967) 37 AWR 473

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Satish Chandra, J.—The Petitioners are the owners of bungalow No. 93, Civil Lines, Jhansi, popularly known as "Judges House" The Petitioners demised this house with its appurtenant land to the State of Uttar Pradesh for the purpose of residence of the District and Sessions Judge by a lease deed executed on 30-6-1936 for a period of five years on a monthly rent of Rs. 125/-. On expiry of this lease another lease was executed for a further period of five years on the same rent. A third lease deed for a period of ten years was executed on an enhanced rental of Rs. 145/- per month. This expired in 1956 whereafter another lease deed was executed between the parties for a further period of ten years on a monthly rent of Rs. 159/-. This lease expired on 30-6-1966. On 21-5-1966 the Collector Jhansi addressed a letter to the Petitioners enquiring whether they would be prepared to renew the lease for a further term of ten years on the existing terms and conditions and rent. The Petitioners on 6-6-1966 replied that they would be prepared to renew the lease on a rent of Rs. 4,200/- per month for the house and 13-1/2 acres of land appurtenant to it and alternatively, they can lease the house with one acre of land only on a rent of Rs. 490/- per month.

They also indicated that in case these alternative set of terms are not acceptable, the existing lease would be deemed to have been terminated after 30-6-1966 and the premises shall be handed over to them on 1-7-1966. This letter, therefore, contained a demand for vacant possession of the premises on 1-7-1966.

2. On 1-7-1966 the Rent Control and Eviction Officer, Jhansi, passed an order of allotment u/s 7(2) of the Rent Control and Eviction Act of the premises in favour of Sri H.G. Shukla, who was the District Judge of Jhansi. It appears that Sri Shukla objected to the allotment of the house in his personal name. Thereupon another order was passed by the Rent Control and Eviction Officer on 7-7-1966 cancelling the order passed on 1-7-1966 and directing that the premises shall, after being vacated by the present occupant, be allotted to the District Judge of Jhansi.

3. This order of 7-7-1966 is challenged on the ground that it was passed without jurisdiction, because on that date the premises were neither vacant nor were about to fall vacant. For the Respondents, however, it is urged that the existing lease stood terminated by efflux of its period and the landlord had made a demand of surrender of possession. Under these circumstances, the premises were, in the eye of law, vacant.

In *Babulal v. Sheonath Dass* 1967 ALJ 236 (SC) the Supreme Court held:

Under Section 7(2), UP (Temporary) Control of Rent and Eviction Act, the District Magistrate can pass an order in respect of an accommodation which is or has fallen vacant or is about to fall vacant. The accommodation must either be vacant or about to fall vacant before he can pass the order u/s 7(2). If the accommodation is neither vacant nor about to fall vacant, when the order u/s 7(2) is passed, the order is void and is without jurisdiction.

The question whether there was vacancy or whether the premises were "about to fall vacant" is a jurisdictional fact and can be enquired into. The Rent Control and Eviction Act does not define the term "about to fall vacant", though Section 2, Clause (h) of the Act says that "vacant" where used with reference to any accommodation, includes an accommodation about to fall vacant an intimation whereof has been sent by the tenant or the landlord to the District Magistrate. This definition would indicate that the impending vacancy must be actual and factual and not merely notional. The intimation spoken of in the definition is about a definite intention to vacate the premises. It does not seem to contemplate an intimation of termination of the lease.

4. Section 7(1)(a) requires a landlord to give a notice to the District Magistrate within seven days after an accommodation becomes vacant by:

(i) his ceasing to occupy it,

(ii) by the tenant vacating it or otherwise ceasing to occupy it,

- (iii) by termination of tenancy,
- (iv) by release from requisition, or
- (v) in any other manner whatsoever.

Here again the notice is required to be given after an accommodation becomes vacant, owing to any of the mentioned causes. The termination of tenancy by itself will not entitle the landlord to give the requisite notice. He can give the notice only after the accommodation becomes vacant in consequence of termination of tenancy. The vacancy contemplated by this provision is physical vacancy and not a vacancy which may be deemed to have arisen in the eye of law by the legal phenomenon of the lease being terminated. The requirement u/s 7(1)(a) that the landlord or under Clause (b) that the tenant will give the notice, does not control the jurisdiction of the District Magistrate to make an allotment order. He can make an order of allotment even if no such notice has been given, see *Kailash Nath v. Rent Control and Eviction Officer* 1955 ALJ 355. Similarly, the landlord's action of giving a notice u/s 7(1)(a) merely on the termination of the lease, will not confer jurisdiction on the District Magistrate to pass an order of allotment. He will have to be satisfied that the accommodation is or has actually fallen vacant or is about to fall vacant. In the context "about to fall vacant" is a concept related to reality. There must be a likelihood of the accommodation actually falling vacant. In *Laxmi Narain v. Rent Control and Eviction Officer* 1962 AWR 161 a Division Bench held that an accommodation cannot be said "about to fall vacant" simply because an ejectment decree had been passed against the tenant. So long as the executing court had not issued a warrant for delivery, it could not be said that the shop was "about to fall vacant" and the District Magistrate had no jurisdiction to issue an order of allotment.

In *Abdul Mazid v. Mukhtar Husain* 1965 ALJ 205 it was held that an accommodation cannot be said "about to fall vacant" simply because an ejectment decree has been passed against the tenant.

The decision of a Division Bench in *Dr. A.G. Dass v. T.R.O.* 1962 AWR 455 is directly applicable to the facts of the present case. There it was held that "termination of a tenancy in any of the manners laid down in Section III of the Transfer of Property Act is not enough to justify a District Magistrate's passing an allotment order in respect of it; the accommodation must be vacant". The Bench further held:

What is essential is that it must be vacant; termination of the tenancy is only one of the ways in which it can become vacant. There is no restriction on a landlord's right to terminate a tenancy by notice to quit; what he cannot do under the Act is to sue a tenant except when certain circumstances exist, vide *Rati Ram v. Moti Lal* 1960 ALJ 134. If those circumstances do not exist, a landlord cannot file a suit for ejectment of a tenant, even though his tenancy has been terminated and consequently the accommodation in his occupation cannot be said to be vacant.

According to this Division Bench, mere termination of a tenancy even by efflux of time, itself will not constitute the accommodation "about to fall vacant." In the instant case the lease has come to an end by efflux of time fixed in it. But, the tenant is in actual occupation without any hindrance .The landlord has not filed a suit for ejectment. Under the circumstances the accommodation was neither vacant nor was about to fall vacant. The Rent Control and Eviction Officer, therefore, had no jurisdiction to make an order of allotment in respect of it.

5. In the result the petition succeeds and is allowed. The impugned order passed on 7-7-1966 is quashed. The parties will bear their own costs.