

(1960) 11 AHC CK 0031

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 2522 of 1960

Vishwanath Prasad and others

APPELLANT

Vs

Rent Control And Eviction Officer, Banaras and others

RESPONDENT

Date of Decision : 14-11-1960

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3

Citation : (1961) 31 AWR 113

Hon'ble Judges : V.D. Bhargava, J

Bench : Single Bench

Advocate : R.S. Pathak, for the Appellant; Krishna Shanker for respondents, for the Respondent

Final Decision : Allowed

Judgement

V.D. Bhargava, J.—This is a petition u/Art. 226 of the Constitution by three brothers who are the sons of Kuber Nath deceased. They are owners of a house No. 56/ 31 situate in Mohalla Govindpura, in the city of Varanasi.

2. According to the Petitioners, they have all along been residing in the major portion of the accommodation, and it was only one room on the ground floor which had been let out, and it was let out to one Madho Prasad. The Petitioners themselves wanted to start business and, therefore, in early 1951 they made an application to the RC EO that as they required the room themselves, permission may be given to file a suit. The matter was considered by the RCEO and he granted the permission sought for by the Petitioners. At that stage Madho Prasad, the then tenant, filed objections and inter alia raised the plea that the landlords' need was not genuine. The objections of Madho Prasad were not accepted and the permission was granted on 20-10-51, and in pursuance of that permission, suit No. 52 of 1952 was filed in the court of the Munsif. The suit was contested in the court of the Munsif, but it was decreed on 17-2-53, and as

requested by Madho Prasad he was granted two months" time to vacate the room.

3. It is alleged in the petition that in spite of the fact that Madho Prasad had agreed to vacate the room, he filed an appeal in the court of the Civil Judge which was dismissed by him, on 8-7-53. This time Madho Prasad requested for six months time to vacate the room which was again granted. A second appeal was filed in this Court by the heirs of Madho Prasad, as it appears that since then Madho Prasad had died. That appeal remained pending here for about three years and it was ultimately dismissed and yet again two months" time was given to vacate. No further litigation could be carried on by Madho Prasad or his heirs, and, according to the petition, a contrivance was devised by the opposite parties 5 and 6 in order to keep the premises in their own possession and it was that they asked one Panna Lal Gupta, opposite party No. 4, to get an allotment in his favour, and, thereafter, the RCEO without any notice to the Petitioners allotted the premises before opposite parties Nos. 5 and 6, heirs of Madho Prasad actually vacated the premises.

4. When allotment had been made, the Petitioners went to the RCEO and pointed out that their need was genuine and they had been given permission to file a suit on that score and that it was after a long drawn litigation for more than eight years that they were likely to get possession, they should not be deprived in that manner. Opposite parties Nos. 5 and 6 had delivered the key to opposite party No. 4 and the RCEO did not accept the contention of the Petitioners.

5. The Petitioners came to this Court and filed a writ petition which was allowed by Mr. Justice Mehrotra relying upon which the RCEO again considered the comparative needs of the Petitioners and Panna Lal Gupta to whom previously he had allotted the house and he came to the conclusion that possibly the Petitioners wanted to let it out to some body else and they did not want it genuinely for their own purpose and therefore, he allotted the premises to Panna Lal Gupta. Aggrieved by that order the Petitioners have come to this Court.

6. On behalf of the opposite party the petition has been contested by Panna Lal Gupta. He has contended that the allotment order was a perfectly valid order and was in accordance with the order of Hon. Mehrotra, J. and that the finding of fact arrived at by the RCEO that the need of the Petitioners was not genuine was binding on this Court and therefore, this Court could not go into that question, and the petition was liable to be dismissed.

7. In my opinion it is orders of this kind which have brought the Rent Control and Eviction Act into disrepute. The Act had been made with very good and beneficial object. Its application sometimes has resulted in great harassment and injustice, and the present case is an example of it. The Petitioners applied as far back as early 1951 to have the premises for themselves and have fought the case till 1957. When they were about to reap the fruits of the decree, the whole effort of theirs has been set at naught by this order of the RC and EO. If the need actually

was not of a genuine nature there would not have been ordinarily such long persistent efforts on behalf of the Petitioners and incurring of expenses.

8. I have had occasion to discuss the object and provisions of the Rent Control and Eviction Act sitting with brother Beg, J. in the case of Smt. Abida Begum v. RCEO Lucknow 1959 ALJR 704, There we held that the power which has been given to the District Magistrate u/s 7 is wholly an uncanalised power and, therefore, this Court by different decisions has laid down principles on which that power is to be exercised. I need not discuss the numerous cases on this score.

9. As had been noticed in the above case, Article 19(1)(f) of the Constitution provides:

All citizens shall have the right....

(f) to acquire, hold and dispose of property.

This is a fundamental right guaranteed under the Constitution to every owner of a house. It is true that there is a provision in the Article which provides that reasonable restrictions may be imposed.

10. The object of the UP Rent Control and Eviction Act is apparent from its preamble. It has been enacted to provide for the continuance during a limited period, the power to control the rent of houses and to prevent the eviction of tenants therefrom. The reason for this enactment is that due to shortage of accommodation in the UP it was thought expedient to provide for this power.

11. This provision clearly shows the object of the Legislature. The Legislature wanted to control the letting on rent and prevention of eviction of the tenants. It did not control actually any possession. If a tenant was already in occupation he could not be evicted unless he came u/s 3, and his rent could not be enhanced. The letting could not be to any person on any exorbitant rent, and for that purpose an order of allotment was necessary from the, RCEO.

12. This Act, according to my view, actually did not affect the power of the owner to occupy the house himself. As has been discussed in the case referred to above. A landlord has two kinds of right in the property-one a right that he can occupy it himself and enjoy the premises. The other right is that he can give it on rent. As soon as a house is given on rent the Rent Control and Eviction Act comes into force immediately, and it is with this object that the State Government has also provided rules. A landlord could not claim the right to occupy the house himself if there was an already existing tenant. But in case it has fallen vacant and thereafter the landlord wants to occupy it himself, that would actually be not a case of letting and, therefore probably the RCEO would have no jurisdiction. I have Said "probably he would have no jurisdiction," because I do not wish to express any opinion on this point as it does not directly arise in this case

13. Ordinarily land lords would not like to keep houses vacant and not let them

out, The only object of the landlord to occupy the house may have been that they may let it put to somebody at a higher rent. As soon as the house is let out by the landlord without an order of allotment, he would commit an offence under the Rent Control and Eviction Act and both the landlord and the tenant who occupied the house without an order of allotment order would be liable to be punished under the Rent Control and Eviction Act. Therefore it would not be possible for any landlord actually to let out to a person of his own choice for the purpose of making more money. Under the circumstances, I think the landlord's request to occupy himself should be favourably considered, when the house falls vacant.

14. In a case when the landlord wants to have a house vacated from a tenant for his personal need, as has been held by me as well as my brother judges in several cases, the need of the landlord and tenant who is occupying the house has to be considered and after considering the needs of both of them orders should be passed in favour of the landlord or against him. But in a case where there is no tenant at all and there is a new tenant who wants to come in, there is no question or any comparison or weighing the needs of one as against that of the other. Therefore, the observations made by this Court about considering the needs of both the landlord and the tenant will not apply.

15. Coming to the facts of the present case, as I have already said, in 1951 permission had been granted to the Petitioner to file a suit and that application was granted when the Petitioner's need was considered to be genuine. Thereafter I do not think that the RC & EO, at a later stage could reconsider the genuineness of the landlord's need. If at the earlier stage the RC & EO says "I give you permission to file a suit on the ground that your need is genuine, but in case after the contest you succeed in ejecting the tenant, then I will allot it to somebody else," it would really be putting the landlord to unnecessary botheration and expenses and trouble for a long number of years in prolonged litigation, The permission which had been granted would really be a force, if the benefit goes not to the landlord but to some future tenant, who ordinarily may not have been able to get a house, but now would easily get it because through the efforts of the landlord the house has been vacated. Consideration of the genuineness of the need of the landlord is desirable only at the stage when he wants permission to sue. But when once the house has been vacated and the landlord wants the house there is no question between the landlord and the future tenant's needs. The needs of the existing tenant or the landlord have to be compared at the time of the granting of the permission. But in my opinion, when once the permission has been given for the purpose of filing a suit on the ground of the genuineness of the need of the landlord, there could not be any further reconsideration of the very same point subsequently by the RC EO.

This very point had been considered by a Bench of this Court in the case of *Amir Chand Jain v. The State of Uttar Pradesh* Civ. Misc. Writ No. 16 of 1951 decided on 10-9-52 where it was observed:

It would be too much to suppose that after a landlord has incurred all the expenses of litigation and has undergone all the worries of a litigation in ejecting a tenant, he should at the end be told "You are not to live in this house. This will be allotted to another person". The permission granted to the landlord u/s 3 of the Act or under parallel provision of the previous Act, is, in, my opinion, tantamount to a guarantee to him that he will be allowed to live in the accommodation and to occupy it for himself. Such a permission would be meaningless if the ejectment of the tenant does not enure to his advantage.

If the Legislature had provided for giving permission on that ground then, in my opinion it could not have been reconsidered on eviction, as has been held by Hon"ble Tandon, J. in *L. Chiman Lal v. Banwari Lal Kailash Chand* 1959 AWR (HC) 70. It was observed:

Where the owner requires the accommodation for himself and his need is genuine the Rent Controller has in view of the very nature of the right of the owner in the property, a duty under the law to grant him the requisite permission u/s 3". That observation was made in a case when permission was sought. A fortiori that reason will apply when actually the permission has been given and a decree has been passed in favour of the landlord and the time comes when he could take actual possession.

16. In the present case the RC & EO has come to the conclusion that the need of the landlord Petitioner is not genuine and probably he wants to make money by letting it out to some one else. He has forgotten that the law gives him a right to issue a notice immediately to the landlords to show cause why they should not be prosecuted under the Act, if they had let it out to any one else on an exorbitant rent or even on moderate rent, but with no allotment order, and, in that event, both the landlord and the tenant to whom the house had been given, would be liable to be penalised under the Act. He could make another allotment in favour of some one else and evict the tenant, who has occupied without authority from him. Therefore, at this stage it was not at all within his jurisdiction to consider whether the need of the Petitioners was genuine or not.

17. Under the RC and E Act rules have been framed by the State Government. They have tried to preserve the right of the owner of the house to a great extent and those rules clearly show that the State Government was vigilant to see that the RC & EO did not pass improper orders. Among those rules are Rls. 4, 6, 7 and 8. If the KC EO does not act promptly and wants to delay the matter. R. 4 provides that after the expiry of one month the landlord would get the right to give the accommodation to any one that he likes and the RC EO is bound to allot to that nominee. R. 6 provides that if an accommodation falls vacant and the landlord wants the accommodation himself then he may permit the landlord to occupy the accommodation himself. In that case actually that rule makes it clear that there would be no allotment in his favour but he will be "permitted" to occupy it himself. It is true that this rule gives a right again to the RC EO to consider whether it was bona fide needed by the landlord or not. But, as I have

said, that request by its very nature should be considered in his favour. In case he does not use it for his own purpose the RC EO will get an opportunity to take proceedings under the Act.

18. In the present case when the RC EO had come to the conclusion that the need of the landlord was not genuine and that the Petitioners wanted to let it out to some one then by virtue of R 7 it was the bounden duty of the RC EO to have enquired from the owner as to whom it should be allotted.

19. The present room was a part of the whole main building and actually it was a portion of the whole house. Learned Counsel for the opposite parties argued that the door in between had been locked and, therefore, it should be deemed to be a separate accommodation. Whenever a portion of an accommodation is let out to someone else, there is bound to be something like a door in between, but merely a door or a wall being in between, the two portions will not make it two accommodations. It has not been denied that barring that one room, the whole house is being occupied by the Petitioners and, under the circumstances, in my opinion, the premises should have been allotted to the Petitioners or to their nominee. At that stage, if the real intention of the owner was not to occupy, but to let it out they would have given out the name of the person to whom they wanted to let it out. Under the circumstances, if they had that right in themselves and could get a proper allotment, there seems to be no reason why they would ask for allotment in their own favour and will stealthily let it out to some one else; a thing which they could legally do. The rule has been made definitely with some object, as has been laid down in *Bhakat Shiromani v. RC EO* 1953 AWR 541.

In our opinion, the purpose of R. 7 of the RC & E Act is to avoid, as far as possible the friction and difficulties which may arise in those cases in which an owner has, in effect, to share his house with a tenant of whom for some reason he may disapprove and when the rule provides that the RC EO shall "consult the owner" it means that the owner has to be consulted as to the suitability of the proposed tenant.

In the case of *Smt. Abida Begum v. RC EO Lucknow*(1) I have discussed it at great length, and I need not repeat. We had come to the conclusion that these provisions were mandatory. In the present case definitely the Petitioners were opposed to allotment being made to the opposite party and according to them, it was really the friends of Mata Prasad, who were getting the allotment indirectly through Panna Lal Gupta the present opposite party.

20. Under the circumstances both on the ground that when permission u/s 3 has once been granted to the owner to file a suit on the ground of personal need, it was not open to the RC EO again to reconsider the needs of the Petitioner, as also on the ground that the present allotment had been made entirely ignoring R. 7 of the RC & E Act, I think the order of the RC EO is not sustainable.

21. Accordingly, I allow the petition and quash the orders of the RC EO dated

8-9-1960. The Petitioners are entitled to their costs from opposite party No. 4.