

irshad Ahmad Vs. Vii Additional District Judge, Aligarh and Others

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Court : Allahabad

Decided On : Mar-01-1994

Reported in : AIR1995All63

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act, 1972
- Sections 12(1), 15(1) and (2), 16(1), 17 and 17(1)

Appeal No. : Civil Misc. Writ Petn no. 14110, of 1993

Appellant : irshad Ahmad

Respondent : Vii Additional District Judge, Aligarh and Others

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : S.U. Khan, Adv.

Judgement :

ORDER

1. This writ petition is directed against the order dated 24-3-1993, passed by VIIth Additional District Judge, Aligarh, respondent No. 1, whereby he allowed the revision setting aside the allotment order which had been passed in favour of the petitioner by the Rent Control and Eviction Officer, Aligarh.

2. The facts in brief are that Aftab Ahmad Khan is owner and landlord of house No. 4/292 (Old No. 4/185) Shaukat Afza, situate at Ameer Nishan, Aligarh. One Gulam Abdul Qadir was tenant of the first floor portion of the said house. On 22-10-1990 the landlord intimated to the Rent Control and Eviction Officer that the tenant had got a job in Jamia Millia, Delhi and shifted there. The accommodation in question was likely to fall vacant. On 30th Nov. 1990, the tenant intimated to the Rent Control and Eviction Officer that he has delivered vacant possession of the accommodation which was under his tenancy to the landlord on 30-11-1990. On 3-12-1990, the petitioner applied for allotment of the accommodation in question. On the next date, the landlord intimated to the Rent Control and Eviction Officer that the accommodation in question be allotted to the petitioner. The Rent Control and Eviction Officer by his order dated 7-11-1990 declared the vacancy and invited applications for allotment. Various persons including respondents 3 and 4 filed applications for allotment of the disputed accommodation. The Rent Control and Eviction Officer allotted the disputed accommodation in favour of the petitioner by his order dated 25-1-1991, taking into consideration the nomination made by the landlord in favour of the petitioner and also considering his need. The petitioner claims that he obtained possession on 28th January, 1991 after the allotment order was passed in his favour. Three separate revisions were filed against the allotment order by Shakil Ahmad, Khurshid and Afsar Respondent No. 1 allowed the revision by his order dated 24-3-1993 setting aside the allotment order and remanded the matter to the Rent Control and Eviction Officer to consider the allotment applications afresh ignoring the nomination which had been made in favour of the petitioner by the landlord. The petitioner has challenged this order.

3. I have heard Sri S.U. Khan, learned counsel for the petitioner and Sri I.H. Khan, learned counsel for the contesting respondents.

4. Respondent No. 1 took the view that the landlord could have made nomination if no allotment order had been made within 21 days from the date of declaration of vacancy and as the allotment order had been passed within 21 days from the date of declaration of vacancy, the Rent Control and Eviction Officer should have ignored such nomination and allotment order could not have been passed on the basis of such nomination. The question arises as to whether 21 days should be

counted for the purpose of nomination by the landlord from the date of order of declaration of vacancy which may be passed by a Rent Control and Eviction Officer under the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) or from the date the intimation is given by the landlord irrespective of the fact whether the vacancy has been declared earlier or may be declared later on after the intimation of the vacancy or expected vacancy by a landlord. It is relevant to refer Section 17(1) of the Act which reads as under:

'17. Conditions of making allotment order. -- (1) Where the District Magistrate receives an intimation, under sub-section (1) of Section 15, if the vacancy or expected vacancy of building any allotment order in respect of that building shall be made and communicated to the landlord within twenty-one days from the date of receipt of such intimation, and where no such order is so made or communicated within the said period, the landlord may intimate to the District Magistrate the name of a person of his choice, and thereupon the District Magistrate shall allot the building in favour of the person so nominated unless for special and adequate reason to be recorded he allots it to any other person within ten days from the receipt of intimation of such nomination:

Provided that where the landlord has made an application under clause (b) of subsection (1) of Section 16, for the release of the whole or any part of the building or land appurtenant thereto in his favour, the said period of twenty-one days shall be computed from the date of decision on the application or where an application for review or an appeal is filed against such decision, from the date of decision on such application or appeal.'

Sub-section (1) of Section 17 of the Act does not refer to any order of vacancy which may be passed by the District Magistrate on receipt of an information regarding declaration of vacancy. In case the landlord intimates vacancy or expected vacancy of the building to the District Magistrate and no order of allotment is made or communicated to the landlord within 21 days from the date of receipt of such intimation, the landlord may intimate to the District Magistrate the name of person of his choice and thereupon the district Magistrate shall allot the

building in favour of the person so nominated unless for special and adequate reasons to be recorded he allots it to any person within ten days from the date of receipt of intimation of such nomination. This provision contemplates passing of the allotment order within 21 days from the date of receipt of intimation. The starting point is the date of intimation of the vacancy or expected vacancy by the landlord. In case, even after such intimation the District j Magistrate chooses to make further inquiry for the purpose of ascertaining the vacancy and proceeds to declare a vacancy at a later date with the result 21 days already expire, it will not deprive the landlord of his right to nominate a person of his choice for the purpose of allotment. The order of declaration may not be passed by the District Magistrate for a long time but for that reason the landlord cannot be deprived of his right of nominating a person of his choice for the purpose of allotment of his building.

5. In *Shamshad Ahmad v. District Judge, Dehradun*, (1984) 2 All Rent Cas 396 : (1984 All LJ 1249), Hon'ble R.M. Sahai, J. held that twenty-one days should be counted from the date of intimation of vacancy or expected vacancy by a landlord. The landlord had given an intimation but thereafter the Rent Control and Eviction Officer directed the Rent Control Inspector to submit a report regarding vacancy and the order of vacancy was declared after 21 days. It was held that the landlord was entitled to nominate a person of his choice as 21 days had expired after the date of intimation of the vacancy. It is, thus, clear that the landlord gets a right to nominate a person of his choice for the purpose of allotment of his building after 21 days from the date of intimation of vacancy and not from the date of declaration of vacancy.

6. Learned counsel for the respondent submitted that there was collusion between the outgoing tenant and the landlord and intimation was not given within seven days from the date of actual vacancy as provided under Section 15(1) of the Act. Section 15(1) of the Act provides that the landlord shall intimate the vacancy of a building falling vacant after his ceasing to occupy it or by the tenant vacating it or by release from acquisition or in any other manner whatsoever not later than seven days after the occurrence of such vacancy and such notice may, at the option of the landlord, be given before the occurrence of the vacancy. The tenant is also bound to intimate vacancy to the District Magistrate and to the landlord not

less than 15 days before the vacancy. In case, the tenant intimates vacancy to the District Magistrate and also to the landlord, but if the landlord does not intimate the vacancy to the District Magistrate under section 15(1) of the Act within seven days of such intimation by tenant the landlord is not entitled to nominate any person of his choice for the purpose of allotment under Section 17(1) of the Act.

7. The landlord will have to intimate the vacancy within seven days if he himself ceases to occupy. He knows the actual date of vacancy and he has to intimate within seven days from the date he vacates it. In case, a tenant is residing and does not intimate the vacancy to landlord, which he is bound to intimate, under Section 15(2) of the Act, the landlord cannot positively say when the vacancy has occurred. In case the tenant has intimated to the landlord that he has vacated or is going to vacate the building as he is required to intimate to the landlord under Section 15(2) of the Act, the landlord is bound to intimate to the District Magistrate within seven days from such intimation or information received by him from the tenant. Where a tenant may have vacated it but disputes the same or where the tenant does not claim that he has actually vacated it, it is difficult for the landlord to ascertain the vacancy from a particular date and in case he has given such information to the District Magistrate regarding vacancy before the tenant has intimated vacancy, it cannot be held that he has not intimated the vacancy as provided under Section 15(1) of the Act. It will be more difficult in case of deemed vacancy. According to a landlord there may be deemed vacancy as contemplated under Section 12(1) of the Act or an expected vacancy which the tenant may dispute and in that case, seven days of the date of occurrence of the vacancy or expected vacancy cannot be ascertained.

The date of seven days of the actual vacancy can be counted only from the date when the tenant has intimated vacancy to the landlord as contemplated under subsection (2) of Section 15 of the Act. In case the landlord has intimated the vacancy to the District Magistrate, he is under an obligation to ascertain the vacancy and pass an allotment order within 21 days. In case no such allotment order is passed, the landlord has a right to make a nomination under Section 17(1) of the Act.

8. In the instant case, the landlord had intimated the vacancy to the District Magistrate on 22-10-1990. The tenant had intimated the vacancy to the District Magistrate on 30-11-1990 and he further intimated that he had delivered possession of the disputed house to the landlord on 30-11-1990. The landlord had intimated that the tenant had shifted to Delhi and the accommodation was likely to fall vacant. The notice of vacancy was clearly in accordance with Section 15(1) of the Act.

9. The Rent Control and Eviction Officer passed allotment order in favour of the petitioner after taking into consideration the nomination made by the landlord in his favour for allotment of the disputed accommodation. Section 17(1) also does not contemplate that the nomination can be communicated on the ground that an applicant for allotment has a better claim than that set up by the nominee. See, *Fateh Bahadur Srivastava v. Ind Additional District Judge, Saharanpur*, (1987) 1 All Rent Cas 424 : (1987 All LJ 734). The allotment order passed by Rent Control and Eviction Officer in favour of the petitioner was, thus, perfectly valid.

10. In view of the above, the writ petition is allowed and the order passed by respondent No. 1 dated 24-3-1993 is hereby quashed. The parties shall however, bear their own costs.

11. Petition allowed.