

Ram Autar Vs. Rent Control and Eviction Officer, Jhansi and ors.

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Court : Allahabad

Decided On : Dec-02-1958

Reported in : AIR1959All377

Judge : O.H. Mootham, C.J. and ;Raghubar Dayal, J.

Acts : Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Sections 7(2) and 17; ;Uttar Pradesh (Temporary) Control of Rent and Eviction Rules, 1949 - Rules 3 and 4

Appeal No. : Special Appeal No. 507 of 1958

Appellant : Ram Autar

Respondent : Rent Control and Eviction Officer, Jhansi and ors.

Advocate for Pet/Ap. : A. Banerji, Adv.

Disposition : Appeal dismissed

Judgement :

O.H. Mootham, C.J.

1. This is an appeal against an order of Mr. Justice James dated the 17th September, 1958, dismissing a petition under Article 226 of the Constitution.

2. The appellant is the owner of two adjacent houses, one of which was in the occupation of a tenant. On the 17th October, 1956, the tenant vacated that house and made over possession of it to the appellant. Two days later on the 19th October, the appellant informed the Rent Control and Eviction Officer that the premises had fallen vacant, and at the same time he asked that they be released in his favour as they were needed by him for his personal occupation.

On the 31st October the appellant appeared before the Rent Control and Eviction Officer and his statement was recorded. No action was however taken by the Rent Control and Eviction Officer and on the 24th November the appellant wrote to that officer informing him that he had occupied the premises and that they should not be allotted to any other person. On the 7th December, 1955, the Rent Control and Eviction Officer made an order rejecting the appellant's application that the premises be released in his favour, and by an order dated the 8th December he allotted the premises to the fourth respondent.

Thereafter the appellant moved the Commissioner and the State Government for the reversal of the Rent Control and Eviction Officer's order allotting the premises to the fourth respondent. These efforts were unsuccessful, and the appellant then filed a petition in this Court in which he challenged the validity of the order of allotment on a number of grounds. The learned Judge dismissed the petition and the appellant now appeals.

3. The only contention advanced in this Court is that the order of allotment in favour of the fourth respondent is invalid as the Rent Control and Eviction Officer must make an allotment order within thirty days of the receipt of a notice by the landlord that the premises have fallen vacant, and that at the expiry of that period he ceases to have power to do so.

4. Now, Section 7(1)(a) of the Control of Rent and Eviction Act provides that a landlord shall, within seven days after any accommodation becomes vacant, give notice of the vacancy in writing to the District Magistrate. Sub-section (2) then provides that--

'7(2). The District Magistrate may By general or special order require a landlord to let or not to let to any person any accommodation which is or has fallen vacant or is about to fall vacant.'

Rules 3 and 4 of the Control of Rent and Eviction Rules framed under Section 7 of the Act are also relevant. They read thus:

'3. Allotment order.--The District Magistrate shall make an allotment order within thirty days of the receipt of the intimation sent by the landlord under Section 7(1)(a) of the Act and shall give notice-thereof to the landlord.

4. Landlord's right to let.--If the landlord receives no notice from the District Magistrate within thirty days of the receipt by District Magistrate of the intimation given by the landlord under Section 7(1)(a) 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.'

The Rules came into force in 1949, and until very recently it appears not to have been doubted that? Rule 3 was directory in character. In two cases, however. *Ram Narain Lal v. State of Uttar Pradesh*. W. P. No. 1437 of 1957, D/- 9-10-1958 (All) and *Nawal Kishore v. Rent Control and Eviction Officer, Bulandshahr*, W. P. No. 2199 of 1957 D/- 17-10-58 (All), a learned Judge has held that where a landlord asks the District Magistrate to release in his (the landlord's) favour premises which have fallen vacant Rule 4 has no application, and that under Rule 3 an allotment order must be made within thirty days of the intimation referred to therein, the District Magistrate forfeiting his right to make an allotment order if he does not do so within this period.

With the greatest respect to the learned Judge, we think this view is erroneous. The only restriction which is imposed by Section 7(2) on the power of a District Magistrate to issue an order requiring a landlord to let or not to let any accommodation is that that accommodation is or has fallen vacant, or is about to fall vacant. There is no restriction imposed by the Act with regard to the period within which an order shall be made, and in our opinion the State Government has

no power to impose such a restriction by a rule.

Under Section 17 of the Act the State Government is empowered to make rules 'to give effect to the purposes of this Act'. The purposes of the Act are to control the letting and the rent of available accommodation and to prevent the eviction of tenants therefrom, and we are unable to hold that a rule which severely restricts the powers of a District Magistrate to control the letting of accommodation conferred upon him by the Act can properly be described as a rule giving effect to the purposes of the latter.

5. The Rules themselves have been somewhat loosely drafted. For example, the expression 'allotment order' which is used in Rule 3 is not to be found in the Act, nor is there any express power to be found in the Act to justify Rule 6 which authorises the District Magistrate, in the circumstances therein stated, to permit a landlord to occupy the premises himself; see *Haji Abdul Shakoor v. Commr. Allahabad-Jhansi Division*, 1955 All LJ 32. Rule 3 requires a District Magistrate to make an allotment order within thirty days of the receipt of notice of the vacancy and to give notice thereof to the landlord.

Rule 4 then provides that if the landlord receives no such notice from the District Magistrate within that same period, he may nominate a tenant; and the District Magistrate is bound to allot the accommodation to his nominee unless for reasons to be recorded in writing he forthwith allots the accommodation to some other person. It is therefore clear from the latter rule that the District Magistrate has the power, even after the expiration of the period of thirty days, to make an order of allotment either in favour of the landlord's nominee, or, if he acts promptly, in favour of someone else.

6. Many difficulties will arise if Rule 3 imposes an obligation on the District Magistrate to make an allotment order within the period of thirty days. Disputed questions of fact may arise as to whether the notice was actually sent by the landlord or whether the accommodation had become vacant. It may not always be possible for these questions to be determined within thirty days, and it appears to us that if the jurisdiction of the District Magistrate to make an allotment order ceases automatically at the expiry of that period, the result will be to frustrate

rather than advance the purposes of the Act.

7. It is of course very desirable that an allotment order should be made as soon as possible and thirty days would appear to be a reasonable period within which to expect that this be done, but on a consideration of the Rules and the Act we are unable to hold that the provision to this effect in Rule 3 is mandatory. In our opinion it is only directory.

8. We are of opinion therefore that this appeal fails and it is accordingly dismissed.

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