

Lachmi Narain Vs. Rent Control and Eviction Officer and anr.

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Court : Allahabad

Decided On : Mar-11-1957

Reported in : AIR1957All490

Judge : Mootham, C.J.

Acts : Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Sections 7

Appeal No. : Civil Misc. Appln. No. 151 of 1956 (O.J.)

Appellant : Lachmi Narain

Respondent : Rent Control and Eviction Officer and anr.

Advocate for Def. : Additional Standing Counsel for Opposite Party 1

Advocate for Pet/Ap. : K.S. Varma, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Mootham, C.J.

1. This is a petition under Article 226 of the Constitution in which the petitioner seeks to have set aside an order of allotment made in favour of the second

respondent. The facts are these;

2. Premises known as No. 7, Cantonment Road, Lucknow, belonged to one Jagan Nath Prasad since deceased. Part of the premises consisting of a shop with attached residential accommodation was in possession of the third respondent as a tenant of Jagan Nath Prasad. On Jagan Nath Prasad's death the petitioner and his four brothers became the owner of the premises, and in September 1955, the five brothers obtained a decree for the ejectment of the third respondent from that portion of the premises which he occupied. On the 12th January 1956, the second respondent applied to the Rent Control and Eviction Officer for the allotment to him of that portion of the premises (herein referred to as the premises in dispute) which were then, notwithstanding the decree which had been obtained by the petitioner and his brothers, still in the possession of the third respondent.

On the 29th March 1956, an appeal which the third respondent had filed against the ejectment decree was dismissed, and on the following day the second respondent again made an application to the Rent Control and Eviction Officer for the allotment of the premises in dispute, The Rent Control and Eviction Officer ordered his Inspector to ascertain whether the premises were vacant, and it is not in dispute that on the 4th April the Inspector reported that the third respondent was in possession but that the second respondent was also living in the premises as the guest of the third respondent.

3. On the 5th April 1956, the petitioner and his brothers filed an application for the execution of their decree of ejectment, and on the 10th April the third respondent made an application to the execution Court that no order be passed against her for delivery of possession of the premises in dispute without notice being first issued to her. It may be inferred therefore that on that date the third respondent was still in possession. In the meantime there had been a private partition between the petitioner and his brothers under which the premises in dispute were allotted to the petitioner.

4. On the 11th April 1956, the premises in dispute were allotted to the second respondent, the allotment to take effect from the date upon which the third respondent vacated the premises. On the 21st April, the petitioner applied to the

Rent Control and Eviction Officer for the premises in dispute to be released in his favour as he required them for the purposes of his business. That application was rejected by the Rent Control and Eviction Officer on the 25th April on the ground that the second respondent had already entered into possession of the premises pursuant to the order of allotment in his favour.

On the 5th May, the date to which the execution proceedings had been adjourned the Court was informed that the third respondent had vacated the premises, and on the 14th May the petitioner applied to the Rent Control and Eviction Officer for the cancellation of the order of allotment in favour of the second respondent on the ground that the third respondent was still in possession of them. This application was rejected by the Rent Control and Eviction Officer.

5. It is in these circumstances that this petition has been filed and the relief claimed by the petitioner is two-fold. He seeks in the first place the issue of a writ of certiorari quashing the order of allotment in favour of the second respondent and he asks also for a mandamus requiring the Rent Control and Eviction Officer to reconsider the petitioner's application of the 21st April that the premises be released in his favour.

6. In my opinion the petition must fail. It was not necessary that the premises in dispute should be vacant on the date when the allotment order was made; it was sufficient for the Rent Control Officer to be satisfied that the premises were about to fall vacant, and the allotment order makes it clear that the allotment was to take effect from the date upon which the third respondent vacated the premises. The only question which I think arises is whether the Rent Control Officer was right in saying, on the 25th April, that he could not cancel the order of allotment because the allottee had by that date entered into occupation of the premises in dispute. Now the petitioner says that the third respondent was then still in possession of the premises, but this is a question of fact and the petitioner, upon whom rests the burden of proof, has failed to establish that her assertion is correct. Counsel has relied on the statement made on behalf of the third respondent in the civil Court on the 5th May, that that respondent had vacated the premises, as evidence that she was in possession until that date.

The statement cannot, in my opinion, be so construed, for it is consistent with the third respondent having vacated the premises on any date after the 10th April. On the material before me I cannot hold that the third respondent was in possession on the 25th April.

7. Learned counsel then says that even if the third respondent had vacated the premises before the 25th April the second respondent had not entered into possession under the allotment order as he was already in possession, and that therefore the Rent Control Officer was not debarred from cancelling the order of allotment; and he relies on *Gopi Nath v. Rent Control and Eviction Officer, Allahabad*, 1955 All LJ 628 (A). In that case a learned Judge of this Court held that 'in case where the allottee entered into possession not in pursuance of an order of allotment but was in possession from long before the order of allotment was made in his favour, the Rent Control and Eviction Officer has power to cancel his previous order of allotment, even otherwise than on the ground of fraud or misrepresentation.'

With great respect I am unable to agree with this view. The learned Judge referred to *Mahabir Prasad v. District Magistrate, Kanpur*, 1955 All LJ 252: ((S) AIR 1955 All 501) (B) in support of the opinion which he had formed, but in that case the facts were different and *Brij Mohan Lall, J.*, did not have to consider the problem which is now before the Court. It appears to me that if the allottee is already in possession of the premises when the order of allotment is made his possession after the date of the allotment order is *prima facie* possession under that order. If that be not so the allotment order would seem to be wholly ineffective and could at any time be cancelled or withdrawn. If the Rent Control and Eviction Officer thinks fit to grant an allotment order to a person in possession of certain premises I can, with respect see no sufficient reason why that order should not be operative and the allottee thereafter be regarded in law as being in possession by virtue of the order.

8. For these reasons this petition fails and is dismissed with costs.