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**SooperKanoon Citation :** [sooperkanoon.com/464171](http://sooperkanoon.com/464171)

**Court :** Allahabad

**Decided On :** Nov-24-1953

**Reported in :** AIR1954All428

**Judge :** Raghubar Dayal and ;V. Bhargava, JJ.

**Acts :** Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Sections 7(1), 7(3), 7D(4) and 7F; [Constitution of India](#) - Article 226

**Appeal No. :** Civil Misc. Writ No. 284 of 1953

**Appellant :** Brij Kishore and anr.

**Respondent :** Rent Control and Eviction Officer and ors.

**Advocate for Def. :** Gopalji Mehrotra (Standing Counsel)

**Advocate for Pet/Ap. :** S.K. Verma, Adv.

**Judgement :**

**Raghubar Dayal, J.**

1. This is an application under Article 226 of the [Constitution of India](#), praying that a writ, order or direction in the nature of certiorari be issued to the opposite party No. 1, that is, the Rent Control and Eviction Officer and Magistrate, Kanpur, and the order of allotment, dated the 4th of March, 1953, passed by opposite party No.

1 in favour of opposite parties Nos. 2 and 3, namely, the Annapurna Cafeteria, Kanpur, through the Secretary, District Food Advisory Committee, Kanpur and Mrs. Rathore, President, District Food Advisory Committee, Kanpur, be quashed.

2. The facts leading to this application are :

3. The applicants are the landlords of certain buildings in a compound with one municipal number 17/3 situated on the Mall, Kanpur. Of the various buildings on this land, one was let out to one Shri Uma Shankar Mehrotra, son of Shri Bhupat Prasad Mehrotra, several years ago, Shri Uma Shankar Mehrotra, whose father Shri Bhupat Prasad Mehrotra carried on a business in the name of S. Varma in that portion of the accommodation, was in occupation of that portion on the 5th of March, 1953, when, according to the allegations in the affidavit filed in support of this application, opposite party No. 1, namely, the Rent Control and Eviction Officer and Magistrate, Kanpur passed the allotment order under Section 7 of the U. P. (Temporary) Control of Rent and Eviction (Amendment) Act (Act XLIV of 1948), ordering the applicants to let out the portion, previously occupied by Shri S. Varma, to the Annapurna Cafeteria, Kanpur. The landlord-applicants received this order on the 11th of March 1953.

4. On 5th March, 1953, according to the admitted case of the parties, a letter, addressed to Mool Chand instead of being addressed to Mool Narain, one of the proprietors of the firm Messrs Brij Kishore Mool Narain (also wrongly described as Messrs Behari Lal Mool Chand) was received from the Rent Control and Eviction Officer, asking Mool Narain to see the Additional District Magistrate (City), Kanpur, at 4 P.M. that day in connection with the bungalow in premises No. 17/3 previously occupied by Shri S. Varma. Mool Narain was not in Kanpur on that day and so could not comply with the request in that letter.

A similar request was then addressed to him on the 6th of March, 1953, requiring him to see the Additional District Magistrate (City), Kanpur, just then. This peremptory request also could not be complied with as Mool Narain had not returned to Kanpur till then. However, one Madho Prasad, brother-in-law of Mool Narain, met the Additional District Magistrate (City), Kanpur and informed him that the portion, occupied by Messrs, S. Varma, was still in their possession, that they

had not vacated it, nor had they any intention to vacate the same and that, therefore, no question of allotting it to someone else arose.

He also informed the Additional District Magistrate, when the question of certain repairs was raised by the latter, that, under the contract of tenancy between the landlord and the tenant, it was the tenant who was bound to carry out the necessary repairs. All this in connection with the two letters and the meeting between Madho Prasad and the Additional District Magistrate (City), Kanpur, was repeated in a letter which Mool Narain sent to the Additional District Magistrate on the 9th of March, 1953.

5. The allotment order, served on the applicants which is annexure D to the application, is dated the 4th of March, 1953, and is with respect to the premises No. 17/3, except one room on the back, the previous occupier of which was Shri S. Varma. The validity of this order is challenged on the ground that the accommodation in dispute had never fallen vacant prior to the allotment order and that, therefore, the allotment order was without jurisdiction and was 'ultra vires' of the Rent Control and Eviction Officer. Another ground urged was that the accommodation in suit formed part of a larger accommodation and that the landlords themselves being in occupation of the other portion, it was incumbent to consult them before this portion could be let out to others.

6. So far as the second ground is concerned, it was mentioned in the counter-affidavit and is not disputed that there are several houses in the compound of premises No. 17-3 and that the accommodation in occupation of the applicants is not contiguous with the accommodation in suit. The various residences in the compound are separate independent units. The second objection, therefore, has no force.

7. With respect to the first contention, it was mentioned in the counter-affidavit filed on the 15th of April, 1953, by the Rent Control and Eviction Officer himself that Shri Bhupat Prasad Mehrotra had allowed one Shri B. D. Khanna to occupy the premises in dispute without any legal authority and that the letter, dated the 5th of March, 1953, was issued to Shri Brij Kishore and Shri Mool Narain, requesting them to contact the Additional District Magistrate (City) for the purpose of deciding

the terms of tenancy after the allotment had been made.

There was nothing in the letter to indicate this and it does not appear why the Additional District Magistrate (City), Kanpur, was to decide the terms of tenancy when the allotment was made by the Rent Control and Eviction Officer who could be the best person to decide the terms of tenancy if this matter was at all to be decided by the Rent Control and Eviction Officer. Ordinarily, we think that this should, have been the matter for decision between the landlords and the prospective tenant. There is nothing on the record to show and it does not appear probable that the Additional District Magistrate (City) was authorised by the District Magistrate of Kanpur to perform any of the functions of the District Magistrate under the Rent Control and Eviction Act.

8. It was further mentioned in the counter-affidavit that the allotment order, dated the 5th of March, 1953, was served on the landlord just after the date of the allotment, but they evaded its receipt, and it was finally served on them on the 11th of March, 1953. This assertion is self-contradictory and meaningless. If the allotment order had been served on the landlord on the 5th of March, 1953, there was no question of its being finally served on the 11th of March. If there were any question of the landlords giving any receipt in token of having received the order no such receipt seems to have been given by the landlords on the 11th of March, 1953, as none has been produced in court. We have not been referred to any papers in support of this assertion in the counter-affidavit that the allotment order was served on the landlords on the 5th of March. However, the actual date of the service of the allotment order is not very material for purposes of this case.

9. It was alleged that the allottee secured possession on the 6th of March, 1953, and that it was false that the original tenant was in occupation of the accommodation in suit.

10. It was also denied that the allotment order was made on the 4th of March, 1953. It was alleged that it was made on the 5th of March, 1953. No explanation, however, has been given in this counter-affidavit as to how the allotment order (Annexure 'D' to the application), which has been filed by the applicants, bears the date, 4th March, 1953. No allegation is made that this is not the order served on

him, or, that any tampering has been done with the date on it or on any other portion of this allotment order.

11. It was also mentioned in this counter affidavit that a notice was issued to the landlords on the 2nd of March, 1953, informing them to appear before the Rent Control and Eviction Officer on the 5th of March, 1953, to file objections, if any, against the allotment of premises No. 17/3 and that as the landlords did not receive the notice, it was served by affixation. No documents were filed along with this affidavit in support of the allegations made therein.

12. A rejoinder affidavit was riled by the applicants on the 22nd of April, 1953. Its copy was delivered to the Standing Counsel on the 21st of April, 1953. On 20th April, 1953, a supplementary counter-affidavit was sworn by the Rent Control and Eviction Officer, its copy was handed over to learned counsel for the applicant on the 21st of April, 1953, and it was filed in Court on the 28th of April, 1953. In this supplementary counter-affidavit, it was mentioned that the Kan-pur Branch of the Women's Food Council was in search of a suitable accommodation for their Cafeteria and applied to the authorities for a suitable place.

No such application has been produced. We are informed that no written application was presented. The supplementary counter-affidavit goes on to say that, on the 19th of February, 1953, the Senior Inspector (Housing) submitted a report to the deponent that the premises in dispute with the exception of one room were in illegal and unauthorised occupation of one B. D. Khanna, that only one room was in the occupation of Shri Bhupat Prasad Mehrotra, the tenant of the premises, that enquiry revealed that B. D. Khanna had been occupying that portion for about a year, that the Rent Control and Eviction Officer visited the premises on the 20th of February, 1953, and that the members of the Women's Food Council visited it on the 22nd of February, 1953.

They approved of the building as a suitable place for the Annapurna Cafeteria. On 24th February, 1953, the Rent Control and Eviction Officer ordered issue of notice to the landlord-applicants with regard to the allotment of the premises in dispute to the Annapurna Cafeteria. A copy of the notice was filed with this affidavit. It shows that it was issued on the 2nd of March, 1953. The endorsement at the back of this

notice is to the effect that Behari Lal Mool Chand refused to accept the notice and that the notice was, therefore, affixed in the, presence of two witnesses. It is amusing to see this report of the person who went to serve the notice. It does not show who actually refused to accept the notice and to whom it was tendered. It is too much to suppose that the employees of the office of the Rent Control and Eviction Officer expected a firm as such to accept the notice.

13. The supplementary counter-affidavit further said that, prior to the 5th of March, 1953, the Rent Control and Eviction Officer received a letter from Shri Uma Shankar, dated the 28th of February, 1953, to the effect that the premises in dispute, with the exception of one room, were vacant. A copy of the letter has been filed. It does not support these allegations. The letter is not by Uma Shankar but is by Bhupat Prasad for S. Varma. The letter did not show that Bhupat Prasad Varma or Uma Shankar Mehrotra had vacated the premises. It simply said that it was being confirmed that his refugee relations residing with him had vacated the premises, the possession of which would be handed over to the nominee of Shri Samiuddin, Additional District Magistrate (City), Kanpur.

The letter further made a request that, according to the verbal agreement, one back big room with two adjoining side rooms on the right hand side of the premises in question including the motor garage which had been constructed by him, would remain in his possession for which reasonable rent would be fixed by the Rent Control and Eviction Officer. The premises in dispute, it appears, had included the two adjoining side rooms and also a motor garage, which was constructed by him, besides one big room at the back.

14. The letter further said that it had also been agreed upon that whenever the premises would be vacated by the Cafeteria, the possession of the same would be given to him in good condition. It is interesting to note that the tenant was stipulating to get back the premises in good condition while the premises were supposed to be so bad in condition that it necessitated a prompt meeting between the landlord and the Additional District Magistrate on the 5th of March, 1953.

15. A copy of the allotment order was filed along with the supplementary counter-affidavit to bear out the assertion that the allotment order was made on the 5th of

March, 1953. This does not improve matters in the absence of any explanation as to why the order served on the landlords bore the date, 4th March, 1953. It is also mentioned in the supplementary counter-affidavit that, in connection with the letter of the landlords to the Additional District Magistrate (City), dated the 9th of March, 1953, the Rent Control and Eviction Officer submitted a report on the 10th of March, 1953. Annexure 4 is a copy of the report.

This report shows along with other things that the fact of vacancy had been conveyed to the Additional District Magistrate on phone by the tenant himself on the 27th of February, 1953 that as regards notice to the landlord, he must have had personal conversation with the Additional District Magistrate quite a few times by that time and that he had got sufficient notice in that behalf. What the Rent Control and Eviction Officer or the Additional District Magistrate expected from the landlords in this connection we fail to imagine. Why should the landlords have been sent for in this connection? The question was about notice to them and not about their seeking audience with those officers.

Further, this report said that the matter had been thoroughly looked into by each one of them including the District Magistrate and possession had also been secured by the Additional District Magistrate (City). We fail to see how possession had been obtained by the Additional District Magistrate (City), Kanpur, who had nothing to do with the matter either as a Rent Control and Eviction Officer or as an officebearer of the Annapurna Cafeteria. The report further said that the repairs could be undertaken at once and as the Additional District Magistrate (City) had himself seen the building in a bad condition, it needed very extensive repairs and that, under Section 7-D(4) of the Act, if the landlords refused to restore the amenities of proper roofing, white-washing etc., the tenant could get it restored on his own and the cost of repairs could be adjusted towards the rent.

On this report of the Rent Control and Eviction Officer, Shri Samiuddin, Additional District Magistrate (City), ordered the Rent Control and Eviction Officer to take necessary action and let him know at once. On the 12th of March, 1953, the Rent Control and Eviction Officer reported that action had already been taken. What that action was and who took it is not clear. If any of these two officers, namely,

the Rent Control and Eviction Officer or the Additional District Magistrate (City), Kanpur, had taken this action, that would not be covered by the provisions of Section 7-D(4) of the U.P. (Temporary) Control of Rent and Eviction Act (Act No. III of 1947) which is :

'7-D(4) : If the landlord fails to restore the said amenities within the time fixed by the District Magistrate, it shall be competent for the District Magistrate to direct that the tenant may have such amenities restored and the cost thereof may be deducted from the rent which is payable to the landlord.'

If the action taken was simply to inform the prospective tenant that he was 'per se' to undertake the repairs, that may come under these provisions. There is nothing on the record to show what particular extensive repairs were necessary to bring back the property which had been in actual possession, may be of an unauthorised person B. D. Khanna. It is in connection with these repairs that the supplementary counter-affidavit mentions that the Annapurna Cafeteria had spent over Rs. 2,000/- in making the necessary repairs. In the supplementary rejoinder affidavit, two assertions deserve mention.

One is with respect to the alleged notice issued on the 2nd of March to the landlords to meet the Rent Control and Eviction Officer on the 5th of March and submit their objections to the allotment. It is alleged that the 2nd and 3rd of March, 1953, were holidays on account of Holi. The other is that the copy of the allotment order filed with the supplementary counter-affidavit does not agree with the allotment order served on the applicants not only with respect to the date but also with respect to the description of the specification of the premises. The allotment order served on the applicants mentioned the specification as 17/3 (except one room in the back) whereas the copy filed with the supplementary counter-affidavit mentions the specification as 17/3 (except one back room).

16. The learned Standing Counsel has mainly relied on two grounds in submitting that the applicants could not get any relief by this writ petition. One is that they had an alternative adequate remedy in view of the provisions of Section 7-F of the U. P. (Temporary) Control of Rent and Eviction Act which runs as follows :

'7-F : The State Government may call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in Section 3 or requiring any accommodation to be let or not to be let to any person under Section 7 and may make such order as appears to it necessary for the ends of justice.'

We are of the opinion that this Section does not word any alternative remedy to the applicants. The applicants have not been given any right to approach the State Government to revise the order passed by the Rent Control and Eviction Officer. This Section just empowers the State Government to call for the record and make suitable orders. The applicants, therefore, cannot approach the State Government by way of appeal or revision against the order of the Rent Control and Eviction Officer. Further, in view of how things have taken place, the applicants cannot be blamed if they did not think of approaching the State Government. Sufficient indication has been given above to show that the officers of the district, including the Rent Control and Eviction Officer, had taken interest in this matter much beyond what is expected from a Rent Control and Eviction Officer in the discharge of his functions under the U. P. (Temporary) Control or Rent and Eviction Act (Act III of 1947).

It is clear that the premises were not vacant when they were inspected and approved for occupation by the Annapurna Cafeteria by the members of its advisory body or by the Rent Control and Eviction Officer or by the Additional District Magistrate (City), Kanpur. Nothing is shown why the Additional District Magistrate should have officially taken interest in this matter even if he was interested in this Cafeteria and should have issued orders to the Rent Control and Eviction Officer which he rightly complied with. We have already referred to the letter of Shri B. P. Varma, dated the 28th of February, 1953, a copy of which was filed along with the supplementary counter-affidavit. That letter referred to three letters from the Rent Control and Eviction Officer to Shri Uma Shankar Mehrotra, son of Shri B. P. Varma and also to some verbal agreement between Shri Uma Shanker and Shri Samiuddin, Additional District Magistrate (City).

As the learned Standing Counsel laid great stress on this question of alternative remedy, we asked him to file the three letters referred to in this letter of the 28th of February, 1953. The first letter, dated the 24th of February, 1953, refers to some telephonic conversation between, Shri Uma Shanker and the Rent Control and Eviction Officer, Shri M. Saidullah, who informed him that he was making arrangements for providing suitable alternative accommodation for Shri B. D. Khanna and his other family members and hoped that they would be good enough to vacate the premises No. 17/3, the Mall, Kanpur, as it was needed by Mrs. Munshi who had already inspected the premises.

According to the counter-affidavits B. D. Khanna was the person who had occupied the premises in suit without any authority and had been occupying it for a year. The Rent Control and Eviction Officer could have taken legal action against him instead of showing such solicitude for him and depending on his goodness to get the premises vacated. The second letter, dated February 26, 1953 shows that there had been fair response from Shri Uma Shanker Mehrotra though Khanna was not very helpful. In this letter, it was mentioned that the Rent Control and Eviction Officer was under no obligation to the 'illegal occupier though he was under obligations to the tenants of the premises. The third letter dated February 27, 1953, shows that the Additional District Magistrate (City), Kanpur had informed the Rent Control and Eviction Officer that the premises would be vacant on March 1, 1953; it refers to the efforts on the part of the Rent Control and Eviction Officer to contact the landlord who incidentally was reported to be deaf and dumb but his representative had not yet met him.

Considering this zealousness on the part of the local officer in connection with the vacation of the premises and its allotment, it can be said, as already mentioned that the applicants need not be blamed if they did not approach the State Government, because they could have presumed that the officers of the State Government must have taken such an interest under some inspiration, however wrong that notion might have been. We are, therefore, of the opinion that the applicants are not deprived of getting their grievances remedied by a writ application on account of the provisions of Section 7-F of the U. P. (Temporary) Control of Rent and Eviction Act, 1947.

17. The second point raised for the opposite parties was that the order impugned was an order passed by the Rent Control and Eviction Officer within his jurisdiction as the premises in suit had fallen vacant. It was, therefore, submitted that the order was not to be interfered with in the exercise of our jurisdiction under Article 226 of the Constitution.

18. Section 7 of the U. P. (Temporary) Control of Rent and Eviction Act (Act III of 1947) runs as follows:

'7. 1 (a) The District Magistrate may by general or special order, require a landlord to give intimation that any accommodation of which he is the landlord is or has fallen vacant, and to let or not to let such accommodation to any person.

(b) In any case where in pursuance of an order of the District Magistrate passed under clause (a) aforesaid the vacancy of any accommodation is required to be reported, the tenant occupying such accommodation shall, within seven days of his vacating the same, give intimation thereof in writing to the District Magistrate or such officer as the District Magistrate may appoint in this behalf.

Provided that in making the first allotment in the case of any accommodation constructed after July 1, 1946, the District Magistrate shall allot it to the owner, if the owner, not being in occupation of any other house owned by him in that municipality or other contiguous area to which the Act applies, genuinely requires such accommodation for his own residence.

Explanation: A newly constructed accommodation shall be deemed to be vacant as soon as it is fit for occupation.'

The vacancy of an accommodation referred to in this Section means the vacancy of the entire accommodation in the tenancy of any person and cannot refer to the tenant's not using, for the time being, part of the accommodation which had been let out to him as a result of the transaction of the contract of tenancy between him and the landlord. If a tenant vacates a portion of the accommodation in his tenancy and lets any other person occupy it, the other persons would be the tenant's sub-tenant and cannot become the tenant of the landlord. So far as the landlord is

concerned, the original tenant continued to be his tenant till his tenancy comes to an end in any of the recognised manners. If the vacancy of the accommodation, contemplated by Section 7, included the vacancy of a portion of the accommodation let to a tenant, it may result in anomalous situations. The landlord has no reason to know of the partial disuse of the accommodation let out to the tenant.

He cannot give any notice to the District Magistrate under Clause (a) of Sub-section (1) of Section 7 of the Act. The original tenant continues to be his tenant and the landlord, therefore, cannot accept another person to whom the Rent Control and Eviction Officer allots the part of the accommodation, on being informed by the tenant that he does not want to use that portion of the accommodation let out to him. The new allottee cannot, therefore, be the tenant of the landlord and cannot be the subtenant of the original tenant in view of the allotment order, there being no contract of tenancy between him and the subtenant. The landlord may also bring himself within the mischief of Sections 8 and 11 of the U. P. (Temporary) Control of Rent and Eviction Act, 1947.

We, therefore, hold that the disuse by a tenant of a portion of the accommodation let to him does not amount to the tenant's vacating that portion of the accommodation and does not therefore, give any right to the Rent Control and Eviction Officer to allot such portion of the accommodation to another person. It follows, therefore that the Rent Control and Eviction Officer's order, allotting the premises No. 17/3 with the exception of one back room in the occupation of S. Varma to the Annapurna Cafeteria, was an order which he had no right to pass and, therefore, that order should be set aside.

19. Learned Counsel for the opposite parties further submitted that if the tenant could not vacate the portion of the accommodation, the allottee, in the present case, would be the subtenant and the applicants could, therefore, take legal action against the tenant for sub-letting in view of Section 3(1)(e) and Section 7(3) of the Act. We have already indicated that the order of the Rent Control and Eviction Officer is not an order to the effect that the Annapurna Cafeteria would be a subtenant of the tenant. The order is directed against the landlords and is with respect

to the Annapurna Cafeteria becoming the tenant of the accommodation in suit. Further, Section 7(3) provides :

'7(3) : No tenant shall sub-let any portion of the accommodation in his tenancy except with the permission in writing of the landlord and of the District Magistrate previously obtained.'

It follows that the Rent Control and Eviction Officer's order alone could not have been sufficient for the creation of the sub-tenancy in favour of the Annapurna Cafeteria. There should also have been the consent of the landlords in writing. It would thus appear that the Rent Control and Eviction Officer's order of allotment, if given effect to as an order creating the subtenancy, would amount to condoning an order of the Rent Control and Eviction Officer which he could not have legally passed.

20. In view of the above, we quash the order of allotment passed by the Rent Control and Eviction Officer in favour of the Annapurna Cafeteria opposite party No. 2 on the 4th or 5th of March, 1953, with respect to premises No. 17/3, the Mall, Kanpur, except one back room previously in the occupation of Sri S. Varma. We further order opposite party No. 1 on whose behalf the case was contested, to pay costs to the applicants which we assess at Rs. 200/-.

21. We order that the three letters filed by the learned Standing Counsel under our direction be returned to him.

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