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Rajesh Gupta Vs. Xth Additional District Judge, Kanpur Nagar and Others

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Court : Allahabad

Decided On : Mar-03-1998

Reported in : 1998(2)AWC1463

Judge : J.C. Gupta, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 15 (1), 16 (1) and 17 (1); Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rules 9 and 10 (7)

Appeal No. : C.M.W.P. No. 3825 of 1996

Appellant : Rajesh Gupta

Respondent : Xth Additional District Judge, Kanpur Nagar and Others

Advocate for Def. : S.C. and ;D.P. Singh, Adv.

Advocate for Pet/Ap. : L.P. Singh, Adv.

Judgement :

J.C. Gupta, J.

1. In this writ petition, the petitioner challenges the authority of the respondent No. 2 (the Rent Control and Eviction Officer, Kanpur Nagar) for making an order of allotment dated 6.10.93 in favour of the respondent No. 3 by ignoring the

nomination made by the landlord in favour of the petitioner under the provisions of Section 17 (1) of the U. P. Act No. XIII of 1972 (hereinafter referred to as 'the Act'). The order of respondent No. 1 dated 22.1.96 dismissing the revision filed by the petitioner under Section 18 of the Act is also under challenge in this writ petition.

2. Some material facts relevant for the purposes of this writ petition may be stated in brief.

3. The dispute between the parties relates to a shop situated on the ground floor of premises No. 128/38 'F' Block Kidwai Nagar, Kanpur Nagar. One Faiyaz Ahmad was undisputedly tenant in the said shop. Since he was likely to vacate the shop, the landlord sent intimation of expected vacancy to the respondent No. 2 through his application dated 19.11.90. On the basis of this, Rent Control Inspector made inspection of the site and submitted his report on 4.12.90. It may be stated here that when the Rent Control Inspector, during the time of inspection, contacted the landlord, the latter gave statement that Faiyaz Ahmad, tenant was not carrying on any business for the last one year and he was likely to vacate the shop within one week. He further disclosed that he has nominated the petitioner for allotment. The inspection was made on 1.12.90. The report of the Inspector was also to the effect that Faiyaz Ahmad was likely to vacate the shop in near future. On 10.12.90 the landlord through his counsel also gave an application to the respondent No. 2 intimating him that his nominee for allotment was the petitioner and shop be allotted to him. It may further be mentioned here that the petitioner and two other persons also moved applications for allotment and undisputedly the petitioner's application dated 19.11.90 was first in point of time and was registered at serial No. 1, while the application of respondent No. 3 was received by respondent No. 2 on 4.1.91. Ignoring the nomination of the landlord made in favour of the petitioner, the respondent No. 2 made the impugned order of allotment on 6.10.93 in favour of respondent No. 3.

4. The contention of the petitioner before the respondents as well as before this Court has been that the Impugned order of allotment has been made in total disregard of the provisions of Section 17 (1) of the Act and is Illegal and without jurisdiction.

5. It was contended by the petitioner's counsel before this Court that once an intimation of vacancy, either actual or expected is received by the Rent Control Officer and no order of allotment is made within 21 days from the date of its receipt, the District Magistrate could make order of allotment in favour of any person other than the landlord's nominee within ten days next following the period of 21 days but this he can do only in exceptional cases and for special recorded reasons but on expiry of the said period of ten days, he has no power or authority left in him to Ignore the nomination made by the landlord and he is bound to accept the same and he has no other option.

6. A perusal of Section 17 (1) of the Act read with Rules 9 and 10 (7) would indicate that where an Intimation of vacancy, actual or expected, sent by the landlord under Section 15 (1) of the Act is received by the District Magistrate, he has to take a timely action and is required to make an order of allotment within 21 days from the date, the intimation of vacancy was received. However, if no such order of allotment is made within the said period of 21 days, the District Magistrate may exercise his discretion for making allotment order in favour of any person other than the nominee of the landlord within 10 days thereafter. But for exercising such discretion, he shall have to record in writing special and adequate reasons for making the allotment. In other words,the District Magistrate after the expiry of 21 days aforesaid shall have to give due regard to the choice of the landlord while making an order of allotment in favour of any other person. The law, however, permits him to disregard the landlord's nomination but this could be done only in exceptional cases for special and adequate reasons to be recorded in writing. The power of making such departure is exercisable in exceptional cases and only for a public purpose of urgent nature. But then there is a time-limit of 10 days within which this power can be exercised and not thereafter. If no order of allotment is also made within the aforesaid period of 10 days, the District Magistrate has no other choice left with him and he has to accept the nomination made by the landlord. In the case of D. F. Gandhi v. R.C. and E.G. 1st. Allahabad and others. 1998 (1) AWC 80, it was held that a combined reading of Section 17 (1) and Rule 10 (7) makes it clear that the provisions contained therein on one hand cast a duty on the District Magistrate to make an order of allotment within a specified period and on the other hand, they also deal with the consequences on the failure of the

District Magistrate to take timely action. The object of these provisions is to safeguard the interest of the landlord so that he may not suffer loss of rent for the inaction and omissions of the District Magistrate. It was further held that where an intimation of vacancy, actual or expected sent by the landlord under sub-section (1) of Section 15 is received by the District Magistrate, he is expected to make an order of allotment within 21 days from the date of receipt of such Intimation. Where no such order of allotment is made within the aforesaid period, a right accrues to the landlord to get a person of his choice as his tenant and for that matter, he may send the name of a person of his choice for making order of allotment in his favour. Once the power of making order of allotment is not exercised within 21 days from the date of receipt of intimation of vacancy, normally the District Magistrate should accept the nomination made by the landlord and make order of allotment in favour of the nominee. However, the District Magistrate may in exceptional cases for a public purpose of urgent nature and for special and adequate reasons to be recorded in writing within 10 days from the date of receipt of nomination and not thereafter, disregard the nomination of the landlord and allot the building to any person other than the nominee.

7. It was argued on behalf of the allottee that the provisions of Section 17 (1) could not be applied to a case of expected vacancy. This argument has no legs to stand. Same question was also examined in the case of D. F. Gandhi (Supra). and it was held therein that Sub-section (1) of Section 17 applies to both types of vacancy, i.e., actual or expected. Similar view was expressed in the case of Shamshad Ahmad D. District Judge, Dehradun and others. 1984 12) ARC 396, as well as in the case of Shiv Charan Lal Gulati v. Smt. Kamla Devi. 1983 ACJ 148.

8. In the present case, the facts narrated earlier would Indicate that the intimation of expected vacancy sent by the landlord was received in the office of Rent Control and Eviction Officer on 19.11.90. The landlord had orally informed the Rent Control Inspector in his statement on 1.12.90 of his choice of allotment in favour of the petitioner. He then again informed in writing to the R. C. & E. O. on 10.12.90 through his application. Period of 21 days counted from 19.11.90 (the date of receipt of intimation of vacancy), expired on 10.12.90. Undisputedly no order of allotment was made during this period. Further period of 10 days expired

on 20.12.90 without there being any order of allotment. The impugned order of allotment was, however, made on 6.10.93 which is per se invalid and without Jurisdiction being wholly in contravention of the statutory provisions contained in Section 17 (1) of the Act. therefore, the same cannot be sustained.

9. The lower revisional court, however, upheld the order of allotment mainly on the ground that since intimation of expected vacancy was received in the rent control office on 19.11.90 and on the same day claim for allotment was also made by the petitioner, there appeared to be a collusion between thepetitioner and the landlord and further on the ground that the period of 21 days expired on 10.12.90 but the landlord before the expiry of the said period on 10.12.90 itself i.e., on the 21st day. had sent an Intimation of nomination made in favour of the petitioner, and as no right had accrued to the landlord to make the nomination before the expiry of period of 21 days, the same was not liable to be considered by the Rent Control Officer. Learned counsel for the respondent-allottee also tried to support the impugned order on the same reasoning as advanced by the lower revisional court. The view taken by the lower revisional court is palpably erroneous in law. Section 17 (1) does not lay down that the landlord has no right to make nomination in favour of a person of his choice for allotment before the expiry of period of 21 days from the date of receipt of intimation of vacancy. The provision contained therein simply lays down that the District Magistrate is not bound to give weight to such a nomination and has power to make order of allotment ignoring the nomination within 21 days from the date of receipt of intimation of vacancy. Any nomination made by the landlord for allotment before the expiry of aforesaid period of 21 days is not illegal. In the case of Ram Lal v. Shri Mani Singh, 1962 ALJ 260, similar controversy arose in respect of Rule 4 of the U. P. Act No. III of 1947 which was in identical language like that of Section 17 (1). It was held that nomination before expiry of 21 days was not contrary to law. Similar view was expressed in the case of Bachey Lal Gupta v. IIIrd Additional District and Sessions Judge, Bareilly and others, 1983 ARC 788. In this case, nomination by the landlord was received in the office of R. C. and E. O. on the 20th day and it was contended before this Court that such a nomination was illegal and could not be acted upon. This contention was turned down and it was held that such a nomination was not illegal and could not be ignored, if no order of allotment was made within 21 days.

10. In the present case, the landlord for the first time on 1.12.90, when the Rent Control Inspector made Inspection of the premises in question, expressed his willingness to let out the accommodation in question in favour of the petitioner. He thereafter sent Intimation of nomination in writing on 10.12.90. The Rent Control Officer had the power to ignore the landlord's nomination and allot the shop in question in favour of the respondent No. 3 before the expiry of period of 21 days, which period expired on 10.12.90. He could exercise his discretion in favour of respondent No. 3 upto 20.12.90 for special and adequate reasons to be recorded in writing but after 20.12.90, the Rent Control Officer had neither any authority nor jurisdiction to ignore the landlord's nomination and make order of allotment in favour of any other person including the respondent No. 3, even on the ground that there was a collusion between the landlord and the petitioner. Whenever a nomination is made by landlord in favour of a particular person, there would always be an element of collusion between them or there may be some agreement between them for taking the accommodation on rent but that by itself would not confer power on the Rent Control Officer to make order of allotment in favour of any other person ignoring the nomination of the landlord after the expiry of the statutory period as contained in Section 17 (1) of the Act. Both the Courts below have wrongly assumed that the Rent Control and Eviction Officer had the power to ignore the landlord's nomination made in favour of the petitioner, though it was not disputed that intimation of expected vacancy had been received by the Rent Control and Eviction Officer on 19.11.90 and no order of allotment was made within 21 days from the receipt thereof nor within 10 days thereafter. The order of allotment dated 6.10.93 made in favour of the respondent No. 3, therefore, cannot be sustained as being null and void.

11. For the reasons stated above, this writ petition succeeds and is allowed. The impugned order of allotment dated 6.10.93 as contained in Annexure-4 made by respondent No. 2 in favour of respondent No. 3 and the order of the revisional court dated 22.1.1996 dismissing revision are set aside and the Rent Control and Eviction Officer is directed to make a formal order ofallotment in favour of the petitioner under the provisions of Section 16 (1) read with Section 17 (1) of the Act, within a period of one month from the date a certified copy of this order is produced before him.

12. in the circumstances of the case, parties are directed to bear their own costs.

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