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**Chandra Vasudeva Vs. Additional District Magistrate (Supplies), Delegated Authority, Meerut and Others**

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**SooperKanoon Citation : [sooperkanoon.com/486006](http://sooperkanoon.com/486006)**

**Court : Allahabad**

**Decided On : Nov-17-1998**

**Reported in : 1998(4)AWC624**

**Judge : Sudhir Narain, J.**

**Acts : Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 11, 13, 15(2), 16 and 17; Uttar Pradesh Urban Buildings (Regualtion of Letting, Rent and Eviction) Rules, 1972 - Rules 9, 9(1), 10, 10(5), 13 and 13(4)**

**Appeal No. : C.M.W.P. No. 32464 of 1991**

**Appellant : Chandra Vasudeva**

**Respondent : Additional District Magistrate (Supplies), Delegated Authority, Meerut and Others**

**Advocate for Def. : S.C.**

**Advocate for Pet/Ap. : V.K. Goel, Adv.**

**Judgement :**

**Sudhir Narain, J.**

1. This writ petition is directed against the order dated 26.9.1991 passed by respondent No. 1 whereby the disputed shop has been declared as vacant and the order dated 28.9.1991 whereby the vacancy has been notified in respect of the disputed shop.

2. Briefly stated, the facts are that Smt. Premwati, respondent No. 3, submitted an application dated 19.5.1988 purporting to be under Rule 10 (9) of U. P. Urban Buildings [Regulation of Letting, Rent and Eviction) Rules, 1972 (in short the Rules) nominating the petitioner for the purpose of allotment of the disputed shop claiming herself as landlady of the disputed property. Om Prakash Sharma, respondent No. 4, also filed an application for allotment alleging that the disputed accommodation had fallen vacant. The Rent Control and Eviction Officer directed the Rent Control Inspector to submit a report. The Rent Control Inspector submitted a report on 27.6.1988 that the petitioner was living as tenant in the disputed shop and prior to him one Upeksha Rai was carrying on business in Electronics. One Umesh Rai was earlier its tenant. The petitioner had occupied the accommodation without any allotment order. The Rent Control and Eviction Officer took the view that as the petitioner was in possession without any allotment order, his possession was unauthorised and declared the disputed shop as vacant by his order dated 26.9.1991.

3. Dinesh Rai, respondent No. 2, filed an application for release of the disputed shop on 24.10.1991 alleging that in a family settlement, he has become owner of the property and on the ground of his bona fide need, he is entitled for its release. The petitioner had also filed an application for allotment. The Rent Control and Eviction Officer has yet not passed any order on the release application filed by respondent No. 2 or the allotment application submitted by respondent No. 4 and the petitioner.

4. Sri V. K. Goel, learned counsel for the petitioner, submitted that the landlord has given consent in writing for the purpose of letting, therefore, the accommodation should not be treated as vacant. He has placed reliance upon Rule 10 (5) (d) of the Rules which reads as under :

'10 (5) A building shall not ordinarily be allotted to the following persons or for the following purposes-

(a) .....

(b) .....

(c) .....

(d) For accommodating a person who has entered into unauthorised occupation of the building or any part thereof without the written consent to the landlord.'

5. Rule 10 only relates to the procedure for allotment and provides the manner in which the allotment application is to be considered and the persons to whom preference may be given in allotment and whose case should normally not be considered for such allotment. Rule 10 (5) (d) only lays down guidelines as to when the building should not be allotted to the persons mentioned in that rule. The persons who had entered into an unauthorised occupation of a building or any part thereof without consent of the landlord, should not be normally allotted such building. A person who is in its occupation with the consent of the landlord in writing can be considered for allotment and the prohibition contained in sub-rule (5) (d) will not be applicable in such a case.

6. In *Raj Kumar v. 1st Additional District Judge, Allahabad and others*. 1988 (2) ARC 35, it has been held that a person occupying premises without allotment order but with the consent of the landlord in writing, although he is an unauthorised occupant but his application for allotment is to be considered by the Rent Control and Eviction Officer. In *Jagjit Sagar v. 1st Additional District Judge, Bulandshahr and others*. 1981 ARC 360, the Court observed that if a person is in unauthorised occupation of a building with the consent of the landlord then his case would not fall under clause (d) of Rule 10 (5) of the Rules. Similar view was taken in *Dinesh Kumar v. 11nd Additional District Judge, Aligarh and others*, 1998 (1) ARC 187. These decisions do not lay down that the occupation of such person without any allotment order becomes authorised. The occupation of building by a person without any allotment order shall be treated as unauthorised under Section 11

read with Section 13 of Act No. XIII of 1972 as held in Nootan Kumar v. IInd Additional District Judge, Banda and others. 1993 (2) ARC 204. The accommodation is to be treated as vacant. The application, however, filed by such person can be considered if it is found by the Rent Control and Eviction Officer that he is in occupation with the consent of landlord in writing ignoring the disability imposed against such an unauthorised person under Rule 10 (5) (d) of the Rules.

7. The next submission of the learned counsel for the petitioner is that the vacancy should not have been notified on the notice board as he is entitled for allotment in view of nomination made by the landlady. The vacancy is notified as provided under Rule 9 of the Rules. Sub-rule [1] of Rule 9 provides that every notice to the District Magistrate under sub-section (1) or sub-section (2) of Section 15 shall contain the particulars as mentioned under Rule 9. Sub-rule thereafter provides that notice shall be signed and dated by the informant and shall be presented in person at any time during office hour on any working day or shall be sent by registered post acknowledgment due. Sub-rule (3) of Rule 9 provides that immediately after the receipt of intimation of vacancy of any building in the office of the District Magistrate, the vacancy shall be entered in a register which shall be maintained in that behalf and be notified for the information of the general public by pasting a copy of the list of the vacant buildings on the notice board of the office, specifying therein the date on which the question of allotment will be considered. He shall also issue a notice to the landlord intimating him the date so fixed. On the date so fixed the District Magistrate shall consider the cases of all applicants registered in the register mentioned in Rule 10 and shall pass an order under Section 16 in accordance with Rules 10 and 11. Rule 9 mandates the District Magistrate to notify the vacancy. The intimation of such vacancy shall be entered into the register maintained by the office of the District Magistrate. The vacancy is notified with the object that the desirous persons may submit application of allotment and their applications may be considered. The District Magistrate has to consider all the allotment applications even if landlord has given consent in writing or has submitted nomination under Section 17 of the Act. The District Magistrate can take into consideration the objection of any person in respect of any allotment application or even against the nomination submitted by the landlord in favour of one of the applicants for allotment.

8. The notice is also given to the landlord with the object that if he so chooses can file application for release and such application is to be considered before the allotment order is passed in favour of any person. Sub-rule (3) of Rule 9 provides that the District Magistrate shall consider the cases of all the applicants registered in the register mentioned in Rule 10 and shall pass an order under Section 16 in accordance with Rules 10 and 11. Rule 13 enables the landlord to file application for release. Sub-rule (4) of Rule 13 provides that every application for release shall as far as possible be decided within one month from the date of its presentation and no allotment in respect of a building covered by an application under Rule 13 shall be made unless such application has been rejected. The Rent Control and Eviction Officer has committed no irregularity in notifying the vacancy in accordance with the Rules.

9. The writ petition is accordingly dismissed.

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