

Srichandlal Bhikari Das Vs Rent Control and Eviction Officer and Others

Court: Allahabad High Court

Date of Decision: Sept. 23, 1965

Acts Referred: Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 " Section 7(1), 7(2)

Citation: AIR 1966 All 269

Hon'ble Judges: W. Broome, J; Jagdish Sahai, J

Bench: Division Bench

Advocate: Banarasidass, for the Appellant; N.A. Kazmi and Standing Counsel, for the Respondent

Final Decision: Disposed Of

Judgement

W. Broome, J.

The following question has been referred to us for decision on the initiative of D. S. Mathur, J.:--

Can the District Magistrate issue an order u/s 7 (2) of the U. P. (Temporary) Control of Rent and Eviction Act in a case where the landlord has

authorised the tenant to sub-let the whole or a part of the accommodation ?

D. S. Mathur, J. pointed out that in Ram Autar Agarwal v. State of Uttar Pradesh 1964 All LJ 491 a learned Judge of this Court (G. C. Mathur,

J.) had held that the District Magistrate could not allot accommodation that was previously in the occupation of a sub-tenant. In his view, that

decision required re-consideration--hence the present reference.

2. Mr. Banarsi Das, appearing for the petitioner Srichand Lal, has attempted to argue that there was no proper permission in writing by the

landlord authorising the tenant in this case to sub-let, as required by Sub-section (3) of Section 7 of the Act; but this is a question with which we

are not at all concerned while deciding the present reference. The question referred to us for decision pre-supposes that the landlord has validly

authorised the tenant to sub-let; and all that we have been asked to determine is whether in such circumstances the District Magistrate has the

power to allot the sub-let accommodation under Sub-section (2) of Section 7. The point sought to be raised by Mr. Banarsi Das, therefore, cannot

be decided by us; that must be left to be determined by D. S. Mathur, J., when we have given our reply to the specific question that has been

referred to us.

3. In 1964 All LJ 491 G. C. Mathur, J. has made the following observations:--

Sub-sections (1) and (2) of Section 7 do not contemplate a vacancy occurring on a sub-tenant vacating any accommodation in his occupation. To

a vacancy occurring on the vacation of an accommodation by a sub-tenant Sub-section (3) of Section 7 applies. If such a vacancy were covered

by Sub-sections (1) and (2) then there was no necessity to enact Sub-section (3) also.

.....

If Sub-sections (1) and (2) of Section 7 were applicable to an accommodation vacated by a sub-tenant, then Sub-section (3) would become

redundant as in that case the District Magistrate could allot the accommodation to any person and no question would arise under Sub-section (3)

of seeking the permission of the District Magistrate and of the landlord

.....

Where a sub-tenant vacates an accommodation it is open to the tenant-in-chief either to induct another sub-tenant or not to do so. If he decides on

the former course he must first obtain the permission of the landlord and of the District Magistrate to do so.

When he applies to the District Magistrate for permission, the District Magistrate may either grant the permission or refuse it, but he cannot make

an order of allotment u/s 7 (2). But if the tenant-in-chief does not desire to induct another sub-tenant he need not inform the District Magistrate and

can occupy the accommodation himself. It is unnecessary, in that case, for him to apply for release of the accommodation under Rule 6". With

great respect to the learned Judge, we feel constrained to observe that he has built up his argument on a false premise, namely that if Sub-sections

(1) and (2) of Section 7 were to apply to sub-tenancies, Sub-section (3) of Section 7 would be unnecessary and redundant. Clause (3), it is to be

noted, introduces in the case of sub-tenancies an entirely fresh requirement that is not found in Clauses (1) and (2), viz. the necessity for obtaining

written permission from the landlord. And reading the clauses harmoniously together, we see no reason to hold that Clauses (1) and (2) of the

Section do not apply to cases of sub-letting.

4. The relevant portions of the clauses in question run as follows:--

7 (1) (a) Every landlord, shall, within 7 days after an accommodation becomes vacant give notice of the vacancy in writing to the District

Magistrate.

(b) Every tenant occupying accommodation shall within 7 days of vacation of such accommodation or ceasing to occupy it give notice thereof in

writing to the District Magistrate.

.....

(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.

(3) No tenant shall sub-let any portion of the accommodation in his tenancy except with permission in writing of the landlord ana of the District

Magistrate previously obtained.

When interpreting these sub-sections, it is most important to keep in mind the Explanation appended to Section 7, which reads thus:--

Explanation: For purposes of this section the word "let" shall include the word "sub-let". Now, the place where the word "let" has been used in

Section 7 is in Sub-section (2), which empowers the District Magistrate to ""require a landlord to let or not to let to any person any accommodation

which is....vacant"". Applying the Explanation to this sub-section, we find that a District Magistrate can also ""require a landlord to sub-let or not to

sub-let to any person any accommodation which is vacant"".

Obviously the landlord proper cannot sub-let--sub-letting is a function that can only be performed by a tenant-in-chief. Consequently, when

interpreting Sub-section (2) in relation to sub-letting, the word "landlord" must be interpreted as meaning tenant-in-chief (who occupies the

position of a landlord in relation to his sub-tenant). Section 7 (2), read with the Explanation, therefore, means that in respect of sub-tenancy

accommodation the District Magistrate can require the tenant-in-chief to sub-let or not to sub-let the said accommodation, if it falls vacant.

Furthermore, to bring Sub-section (1) of Section 7 into harmony with Sub-section (2), it is necessary to interpret the word "landlord" in Clause (a)

and the word "tenant" in Clause (b) of subsection (1) as meaning, in the case of subtenancies, the tenant-in chief and the sub-tenant respectively.

5. In our view, therefore, when a subtenant vacates accommodation occupied by him he has to give notice in writing to the District Magistrate u/s 7

(1) (b), while the tenant-in-chief has to give notice to the District Magistrate u/s 7 (1) (a). And thereafter the District Magistrate, acting u/s 7 (2),

may require the tenant-in-chief to sub-let or not to sub-let the accommodation in question to any person. With due respect, therefore, we are not

prepared to agree with the view taken by G. C. Mathur, J. in Ram Autar Agarwal's case 1964 All LJ 491, that the District Magistrate cannot

make an order of allotment u/s 7 (2) in respect of accommodation that has been vacated by a sub-tenant.

6. Accordingly we answer the question that has been referred to us in the affirmative and direct that the papers be returned with this answer, so

that the case may be disposed of, after the remaining issues have been decided.