

(1976) 01 AHC CK 0024

Allahabad High Court

Case No: Special Appeal No. 134 of 1975

Jagdish Narain Bhatnagar and
Others

APPELLANT

Vs

The Additional District Judge (I)
Bareilly and Others

RESPONDENT

Date of Decision: Jan. 19, 1976

Acts Referred:

- Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Section 7(2)
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 16, 21

Citation: AIR 1976 All 493

Hon'ble Judges: K.B. Asthana, C.J; C.S.P. Singh, J

Bench: Division Bench

Advocate: R.N. Bhalla, for the Appellant; M.P. Singh and A.P. Prakash, for the Respondent

Final Decision: Dismissed

Judgement

C.S.P. Singh, J.

This is an appeal by the landlord-petitioners. An application was moved by him u/s 16 of the Rent Act for release of the accommodation. It was alleged that the premises had been allotted to one Sri R. P. Dangwal, A. D. M. (J) with the rider that the allotment order shall stand terminated on the expiry of 15 days from the date of making over charge of the post of A. D. M. (J), Bareilly. It was asserted that Sri R. P. Dangwal has already been transferred from Bareilly and that as a result, the house had fallen vacant and the premises should be released in favour of the landlord-appellants. The Rent Control and Eviction Officer held that a vacancy had occurred by the operation of law, and as such released the premises in favour of the landlord-appellants.

On appeal, the District Judge found that the need of the landlord-appellants was genuine but held that inasmuch as the accommodation was neither factually nor notionally vacant, the application u/s 16 of the Act was misconceived. He was of the view that the proper remedy was by way of an application u/s 21 of the Act. In the operative portion of the order, he partly allowed the release application to the extent that he directed that the release of the accommodation would take place on the premises falling vacant on being vacated by Sri Dangwal.

2. The landlord-appellants thereupon filed writ petition No. 6041 of 1974 out of which the present appeal arises. The learned single Judge held that inasmuch as Sri Dangwal continued to be in occupation of the premises, no factual or notional vacancy existed, and as such the premises in dispute could not be released u/s 16 of the Act. The contention on behalf of the landlord-appellants that the application made by him should be treated as one u/s 21, was not countenanced, on the consideration that neither the District Magistrate, nor the District Judge had compared the needs of the landlord and the tenant as envisaged u/s 21 of the Act.

3. Counsel for the appellants contended that as u/s 43 (2) (k) of the Rent Act, the allotment made under the old Act became final, a vacancy occurred on the expiration of that order, and as such an application u/s 16 was in order, and, further that the tenant was estopped from taking the stand that the premises were not vacant, on account of the allotment order passed earlier. It was also contended that as only family members of the tenant were residing in the premises, the premises should be deemed to be vacant.

4. We are unable to accept these contentions. Section 7 (2) of the old Rent Act did not contemplate any conditional allotment order. That section postulated an order by the District Magistrate to the landlord to let, or not to let any accommodation which has fallen vacant or was likely to fall vacant. The direction which the District Magistrate issued under that section had in the circumstances to be confined only to the letting out of the accommodation. No further direction u/s 7 (2) could be validly issued. Thus the rider in the allotment order that the allotment will stand terminated on the expiry of fifteen days from the date of making over charge of the post of A. D. M. (J), was a mandate which did not fall within the four corners of Section 7 (2) and was not honest in the eye of law.

Thus, on the passing of the new Act, inasmuch as the possession of the tenant could not be said to be unlawful, no vacancy either notional or factual occurred so as to enable the landlord to take proceedings u/s 16 of the Act. No question of estopped also arises in this view of the matter, as that latter part of the allotment order was a nullity. The fact that the tenant acting on that allotment order took possession, would also not create any estopped, as the order cannot be said to contain any representation on the part of the tenant which induced the landlord to alter his position to his detriment.

5. The third contention also does not have any substance. It has been found for a fact the wife of the tenant and his other family members are residing in the premises. This being so, the mere fact that the tenant has been transferred to another city, would not create a vacancy so long as it remained occupied by his family members. The provisions of Section 12 of the Act which create a fictional vacancy cannot possibly be applied to a case where the premises are in factual occupation of the tenant or his family members.

6. As a last resort counsel for the appellants urged as he did before the learned single Judge, that as his application u/s 16 of the Act had all the requisites of an application u/s 21 of the Act, the appellate authority should have granted a relief to the appellants under that provision. We cannot bring ourselves to agree with this contention, for the nature and the scope of proceedings under Sections 16 and 21 of the Act are not similar, and neither have the parties fought out the case on this basis. Further, the authorities deciding applications u/s 16 and 21 are different. u/s 16 of the Act, it is the District Magistrate who disposes of applications; while u/s 21 it is the Prescribed Authority, and they need not be the same officers in all cases.

7. For all these reasons, we uphold, the judgment of the learned single Judge and dismiss the appeal. There shall, however, be no order as to costs.