

(1975) 11 AHC CK 0026

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 3058 of 1973

Suraj Pal Gupta

APPELLANT

Vs

The District Judge, Aligarh and
Others

RESPONDENT

Date of Decision: Nov. 21, 1975

Acts Referred:

- Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Section 7
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 12, 16, 43(2)

Citation: AIR 1976 All 319 : (1976) AWC 119

Hon'ble Judges: R.L. Gulati, J

Bench: Single Bench

Advocate: V.K. Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.L. Gulati, J.

This is a petition under Article 226 of the Constitution arising out of proceedings under the U. P. (Temporary) Control of Rent and Eviction Act, hereinafter referred to as the Act.

2. The dispute relates to an accommodation of which the 3rd respondent, Chitar Mal, is the owner. The accommodation was previously in the tenancy of one Panna Lal where he was running a small flour mill and oil expeller. The landlord filed a suit against him and obtained a decree for ejection. The decree was put in execution and the entire machinery and the flour mill and oil expeller was purchased by the petitioner, He started running the flour mill and obtained a licence on 23rd March, 1972 from the District Supply Officer for that purpose. In other words, the accommodation came in possession of the petitioner. The petitioner then applied

for the allotment of the accommodation to him u/s 7 of the Act. The landlord contested the application on the ground that the accommodation had not fallen vacant. During the pendency of the application the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 (hereinafter referred to as the new Act) came into force with effect from 15th July, 1972. By virtue of the provisions contained in Section 43 (2) (b) of the new Act, further proceedings for allotment had to be continued in accordance with the provisions of the New Act. The Rent Control and Eviction Officer, Aligarh, however, continued the proceedings under the old Act and rejected the application of the petitioner on the ground that as no Perwana of ejectment had been issued against the old tenant, there was no legal vacancy and, as such, allotment could not be made in favour of the petitioner. This order was passed on 18th August, 1972 after the new Act had already come into force. Against this order the petitioner went up in appeal before the District Judge, Aligarh. The District Judge rejected the appeal on the ground that u/s 7 of the old Act the Rent Control and Eviction Officer had the power to make an order of allotment in anticipation of a vacancy but he was not obliged to do so. According to him there was nothing in the U. P. Act No. 3 of 1947 which obliges the District Magistrate to allot an accommodation when there is merely a possibility of a vacancy and, therefore, when the Rent Control and Eviction Officer did not choose to make an order of allotment he committed no illegality.

3. In my opinion, the view taken by the District Judge is not correct. If the law permits an allotment order to be made in anticipation of a vacancy, the same cannot be refused merely because no actual vacancy has occurred. Such a view will negative the express provisions of law which provides that an allotment order may be made when an accommodation is about to fall vacant.

4. That apart, the order of the Rent Control and Eviction Officer as also of the District Judge suffer from another legal infirmity. As already noticed above, the new Act had come into force while the application of the petitioner was pending before the Rent Control and Eviction Officer. Section 43 (2) (b) provides that any application or proceedings pending immediately before the commencement of this Act before the District Magistrate u/s 7 of the old Act or under Rule 6 of the Control of Rent and Eviction Rules shall be disposed of by him in accordance with the provisions of Section 16 of this Act. Section 16 (a) provides that the District Magistrate may require the landlord to let out any building which is or has fallen vacant or is about to fall vacant, so that Section 16 also contemplates of an allotment in anticipation of a vacancy. Then there is Section 12 in the new Act which provides for deemed vacancy of buildings in certain cases. Subsection (1) of Section 12 says :--

(1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if--

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family; or

(c)....."

It is the contention of the petitioner that there was a deemed vacancy in the instant case both under clauses (a) and (b) of Section 12 (1) of the new Act inasmuch as the previous tenant had removed all his effects which had been purchased by the petitioner and secondly he came to occupy the accommodation in question in place of the old tenant and he is not a member of the family of the old tenant as defined in Section 3 (g) of the new Act. Therefore, there was a vacancy in law and it was not merely a case of an anticipated vacancy. It is not possible to record a finding on these pleas in the present proceedings but one thing is quite obvious that the orders passed by the Rent Control and Eviction Officer and the District Judge are patently erroneous inasmuch as they have been passed under the old Act whereas they should have been passed under the provisions of the new Act. Both of them have not taken into consideration the provisions of Sections 16 and 12 of the new Act.

5. In the result, the petition succeeds and is allowed. The order of the Rent Control and Eviction Officer dated 18-8-1972 (Annexure "B") and that of the District Judge, Aligarh dated 28-2-1973 (Annexure "C" to the writ petition) are quashed. The Rent Control and Eviction Officer is directed to restore the petitioner's application for allotment to its original number and to decide it afresh in accordance with law and in the light of the observations made hereinabove. He will particularly deal with the contention of the petitioner based upon Section 12 of the new Act. However, I make no order as to the costs.