

Chhotey Lal vs District Magistrate And Ors. on 18 July, 1952

Equivalent citations: AIR1952ALL913, AIR 1952 ALLAHABAD 913

JUDGMENT

Waliullah, J.

1. This is an application under Article 226 of the Constitution praying that a writ of certiorari be issued calling for the record of the case and for quashing the allotment order, dated 7-7-1952, as also another order dated 15/16-7-1952, by which the petitioner was ordered to vacate the house within three days. There is an affidavit in support of the application. We have heard Sri B. D. Gupta, learned counsel for the petitioner, at length.

2. The events that have happened in the present case are perfectly clear and they are these: The petitioner purchased the house in question in February 1952. Then the house was in occupation of a tenant. Some time in May 1952, the tenant, who was a Government servant was under orders of transfer to another district. The petitioner appears to have given an intimation to the Rent Control and Eviction Officer about the impending vacation of the house by the tenant. A request was also made that the house might be allotted to the petitioner. Next, we find that the house was actually vacated by the tenant on 16-6-1952. That very day the petitioner took possession of the house. He is continuing in possession since then. An order by the District Magistrate allotting the house to the Inspector of Shops and Commercial Establishments, Moradabad, who is opposite party No. 3 to this application, was passed on 7-7-1952. Thereafter another order dated the 15/16-7-1952 was passed by the District Magistrate directing the petitioner to vacate the house within three days. The petitioner has now come up to this Court praying for the quashing of these orders.

3. Learned counsel has contended strenuously that the action taken by the District Magistrate by his order, dated 15/16-7-1952, could be legal only if he (the petitioner) had come into occupation of the house after 7-7-1952, in contravention of the allotment order made by the District Magistrate on that date. Learned counsel has laid great emphasis upon these words in Section 7-A:

"..... The District Magistrate believes or has reasons to believe that any person has, in contravention of the said order, occupied the accommodation or any part thereof. . ."

According to the learned counsel the appropriate interpretation of the expression "has occupied the accommodation" would be occupation of the accommodation which has commenced since the passing of the order of allotment by the District Magistrate. In this case, as mentioned above, the order of allotment was passed by the District Magistrate only on 7-7-1952. We have given due consideration to the argument of the learned counsel regarding this interpretation. It seems to us, however, clear that this is not the proper interpretation of the expression, more particularly so if we keep in mind the scheme which the Act lays down and the object which the legislature had in view in

passing this piece of enactment.

4. Rule 3 of the rules framed by the State Government under Section 17 of the Act distinctly provides that the District Magistrate has to make an allotment order within thirty days of the receipt of the intimation sent by the landlord under Section 7 (1) (a) of the Act. Rule 4, in substance, pro-

vides that if the District Magistrate fails to pass such an order within thirty days of the receipt of the intimation the landlord may nominate a tenant himself and the District Magistrate shall then allot the accommodation to the nominee of the landlord unless, for reasons to be recorded in writing, he forthwith allots the accommodation to any other person. Then we have Rule 6 which provides for a case when an accommodation has fallen vacant or is likely to fall vacant and it is bona fide required by the landlord himself for his own personal occupation. In such a case, the District Magistrate may permit the landlord to occupy it himself. These rules are no doubt made by the State Government for the purpose of giving effect to the object of this Act and, therefore, they cannot validly travel beyond the scope of the Act itself.

5. Lastly we may refer to the preamble to the Act which, it seems to us, leaves one in no doubt whatsoever that one of the principal objects which the legislature had in view in passing this Act was to make suitable provision to meet the situation created by the shortage of accommodation in this State. With a view to achieving that object for a limited period wide powers of control of letting and of rent of accommodations were conferred upon the District Magistrate. The provisions of Section 7 (1) (a) and Section 7-A (1), if properly interpreted, can only mean that any occupation or even continuance of occupation of an accommodation after the District Magistrate has, within thirty days of the receipt of the intimation in question, passed an order of allotment, in contravention of such an order, would be hit by the provisions of Section 7-A.

6. In view of the above it is clear that the petitioner in the present case must be held to have contravened the order of allotment passed by the District Magistrate on 7th July 1952, when he continued to occupy the accommodation i. e., the house after the 7th July 1952. In this view of the matter both the orders of the District Magistrate, dated 7th July and 15/16th July 1952, appear to be quite proper and legal.

7. The application must, therefore, fail and is dismissed.

Bind Basni Prasad, J.

8. I agree with my learned brother and desire to add a few words, The contention of the learned counsel for the petitioner is that having regard to the language of Sections 7 and 7-A, U. P. Temporary Control of Rent and Eviction Act, 1947, where an accommodation falls vacant and the landlord, after giving intimation of this to the District Magistrate, himself occupies it before it is allotted to a tenant by the District Magistrate under Section 7 of the Act, he cannot be evicted by the District Magistrate under Section 7-A of the Act. Section 7 (1) (a) runs as follows :

"The District Magistrate may by general or special order, require a landlord to give intimation that any accommodation of which he is the landlord is or has fallen vacant, and to let or not to let such accommodation to any person."

The contention is that the above provision does not prohibit a landlord himself to occupy the accommodation, and that being so if the landlord occupies it, he does not contravene the provisions of Section 7 (1) (a). Hence Section 7-A does not come into play, because it applies only when there is a contravention of Section 7 (1).

9. The arguments advanced on behalf of the petitioner are firstly, that the object of the Act, as can be gathered from the preamble, is to control the letting and not to stop the landlords from occupying their own accommodation, and secondly, that the Act should be interpreted strictly as it encroaches upon the right of private property and deprives a landlord to enjoy his own property. So far as the preamble of the Act is concerned, the second paragraph of the preamble shows that one of the objects was to solve the problem of the shortage of accommodation. It provides :

"And whereas due to the shortage of accommodation in the United Provinces it is expedient to provide for the continuance during a limited period of powers to control the letting and the rent of such accommodation and to prevent the eviction of tenants therefrom."

It is evident from the preamble read as a whole and from the provisions of the Act that the object was three-fold :

(1) protection to tenants, (2) to stop rack-renting, and (3) to control the accommodation in such a manner that the problem of its shortage may be solved, so far as possible.

The Act should be interpreted so as to advance its objects and not to defeat its purpose. Of course, where there are express provisions of the statute they must be given effect to. But where there is any doubt in the interpretation, the construction must be such as to advance the object of the Act. In interpreting Sections 7 and 7-A, other provisions of the Act must also be looked into. Now if the contention of the learned counsel is accepted it would defeat the very purpose of the Act. For instance, a landlord is living in one house, but he has another house also which is occupied by a tenant. As soon as the tenant leaves it, he occupies that house also without waiting for the order of allotment by the District Magistrate. He can in this manner occupy two houses, and thus reduce the accommodation available for allotment. The very conduct of the petitioner in the present case negatives his contention that no permission of the District Magistrate is necessary for occupation of an accommodation by a landlord. He admits in his affidavit that when the accommodation in dispute was likely to fall vacant he sought for permission of the District Magistrate to occupy it.

10. It is argued that there is always an interval between the date on which an accommodation is vacated by a tenant and the date on which it is allotted to another person. Why should a landlord be without rent for that interval ? Rule 3 of the rules made under Section 17 of the Act provides that the

District Magistrate shall make an allotment order within thirty days of the receipt of the intimation sent by the landlord under Section 7 (1) (a) of the Act. If the landlord receives no notice from the District Magistrate within thirty days of the receipt by the District Magistrate of the intimation given under Section 7 (1) (a) then the landlord has the right to nominate a tenant and the District Magistrate is bound to allot the accommodation to his nominee unless, for reasons to be recorded in writing, he forthwith allots the accommodation to any other person.

In public interest, the rules contemplate that the landlord must wait for a period of thirty days at the most before he lets it out to any person of his own choice with the permission of the District Magistrate. It is not a very big loss which the law casts upon the landlords. There must be a time limit between the receipt of the intimation that an accommodation is going to be vacated and the actual allotment. It is true that by Section 7 (1) (a) the landlord has not been expressly prohibited from himself occupying an accommodation which has fallen vacant; but it is implicit in it that when an accommodation falls vacant and it is allotted by the District Magistrate to another person according to law then he must hand over possession to such a person. There would be no sense in the power of the District Magistrate to require a landlord to let an accommodation to any person unless it carries with it a power to implement such an order.

Section 7-A contains the provision for the implementation of the order passed under Section 7 (1) (a). It provides :

"Where in pursuance of an order of the District Magistrate under Sub-section (1) of Section 7 the vacancy of any accommodation is required to be reported and is not so reported or where an order requiring any accommodation to be let or not to be let has been duly passed under Sub-section (1) of Section 7 and the District Magistrate believes or has reason to believe that any person has, in contravention of the said order, occupied the accommodation or any part thereof, he may call upon the person in occupation to show cause within a time to be fixed by him why he should not be evicted therefrom."

Learned counsel lays emphasis upon the words "has occupied". He contends that on the particular date when the petitioner occupied these premises he did so not in contravention of Section 7 (1) (a) and having legally entered the premises he cannot be forcibly evicted under Section 7-A. He argues that the words "has occupied" mean the point of time after the passing of the allotment order by the District Magistrate. But as in the present case he occupied the premises prior to the passing of the allotment order the provisions of Section 7-A are not attracted and no force can be used in evicting him.

I am unable to agree with this contention. At least from 7-7-1952, when the allotment order was made by the District Magistrate his occupation was in contravention of the order of allotment passed by the District Magistrate under Section 7 (1) (a). If the petitioner's argument is accepted, then it would mean that unless the District Magistrate passes an allotment order at the very moment that a tenant vacates an accommodation it would not be possible for him to enforce the provisions of Section 7-A if the landlord has already occupied it. I am unable to place such an interpretation which

has the effect of defeating the object of the Act. The words "has occupied" must be interpreted to include continuance of occupation by a landlord after the passing of the allotment order by the District Magistrate under Section 7 (1) (a). Any other interpretation would nullify the Act.'

11. Rule 6 of the rules framed under Section 17 of the Act provides:

"When the District Magistrate is satisfied that an accommodation which has fallen vacant or is likely to fall vacant is bona fide needed by the landlord for his own personal occupation, the District Magistrate may permit the landlord to occupy it himself."

It is evident from the above rule that a landlord cannot occupy an accommodation unless he has obtained permission to that effect from the District Magistrate. In the present case, admittedly the petitioner has received no such permission. Learned counsel questions the validity of this rule, contending that it is inconsistent with the provisions of the parent Act. I see no inconsistency. The rules can be framed for the purpose of carrying out the purposes of the Act and this rule goes no further than that.