

## **Sm. Ram Katori vs The Rent Control And Eviction Officer, ... on 20 February, 1953**

**Equivalent citations: AIR1953ALL543, AIR 1953 ALLAHABAD 543**

### **JUDGMENT**

Agarwala, J.

1. This is a petition under Article 226 of the Constitution, praying that the order of allotment of the petitioner's house passed by the Rent Control and Eviction Officer, Agra, on 6-7-1951, in favour of Govind Ram opposite-party be quashed and that an 'ad interim' injunction be issued staying the operation of the said order pending the disposal of this petition.

2. The petitioner is the owner of house No. 3456/3557 situate in mohalla Gulabkhana, Agra.

According to her, she purchased it in 1948 for her residence. At the time of purchase, the whole house was in occupation of a tenant. The house fell vacant in January, 1951, when the upper portion of that house was allotted to her by the Rent Control and Eviction Officer and the lower portion was thereafter allotted to one Jiwan Ram but Jiwan Ram vacated it soon after and then the petitioner occupied the lower portion also. On 19-1-1951, the Rent Control and Eviction Officer without consulting the petitioner, allotted the said lower portion to Govind Ram opposite party No. 2. On 22-1-1951, the petitioner applied to the Rent Control and Eviction Officer, Agra, for the allotment of the lower portion to her as she wanted it for her own use. The Rent Control and Eviction Officer, however, rejected her application and confirmed his previous order of allotment in favour of Govind Ram on 28-2-1951. Against this order, the petitioner moved the Commissioner in revision and the Additional Commissioner of Agra, by his order dated 18-4-1951, set aside the order of the Rent Control and Eviction Officer and directed him to make a fresh allotment after consulting the petitioner. The Rent Control and Eviction Officer, however, after consulting the petitioner, again confirmed his previous order. A revision against this order to the Commissioner was dismissed.

3. In this petition, it was urged on behalf of the petitioner that the last order of the Rent Control and Eviction Officer, in which he confirmed his previous order allotting the lower portion of the house to Govind Ram, was void and should be quashed. Two grounds have been urged.

The first ground taken is that the U. P. Rent Control and Eviction Act (Act No. 3 of 1951) is void because it is inconsistent with the provisions of fundamental rights contained in Article 19(1)(f), Part III of the Constitution. This question has been decided by this Court and it has been held that the Act is not inconsistent with the provisions of the aforesaid Article of the Constitution and is not void,

vide, -- 'Raman Das v. The State of U. P.', AIR 1952 All 703 (F.B.) (A).

The second ground urged is that the order of the Rent Control and Eviction Officer was contrary to Rule 7 of the Rules framed by the Provincial Government under Section 17, U. P. (Temporary) Control of Rent and Eviction Act, 1947. Rule 7 runs as follows:

"7. Where a portion of accommodation falls vacant and the owner is in occupation of another portion thereof, the District Magistrate shall, before making the allotment order, consult the owner and shall, so far as possible, make the allotment in accordance with the wishes of the owner."

4. The petitioner being already in occupation of the upper portion of the house, the rule, no doubt, applied to her case. The District Magistrate was, therefore, bound before making the allotment order, not only to consult the owner but also, "so far as possible", to make the allotment in accordance with the wishes of the owner. In his order, the Rent Control and Eviction Officer has stated that the petitioner did not require the lower portion of the house for her own use because she had let out a portion of the upper portion itself to another tenant, namely, Shrimati Tulsa. He has further stated that Govind Ram's needs were greater and that the upper portion is quite independent and separate from the lower portion as the approach to the upper portion is by a staircase which can be used from outside and one can go up without passing through the lower portion of the house. After stating these reasons the Rent Control and Eviction Officer observed :

"As such, therefore, it is not necessary that her wishes should have been taken into account because I interpreted the rules correctly."

No doubt, apparently, the Rent Control and Eviction Officer did not mean what he said. He obviously meant that, after having consulted her wishes, it was not possible to make the allotment in her favour. The rule requires that the wishes of the owner should be respected "so far as possible".

5. The rules, framed under Section 17 of the Act, provide for three cases in which the wishes of the owner in matters of allotment can be respected : The first case arises when the owner is not in occupation of the accommodation at all but some other tenant was in occupation of it and the whole accommodation falls vacant on the tenant vacating it. In this case, Rule 6 provides that the District Magistrate may permit the landlord to occupy the accommodation when he is satisfied that it is 'bona fide' needed by the landlord for his own personal occupation. If the Rent Control and Eviction Officer finds that the owner does not 'bona fide' need the accommodation for his personal use, he may refuse to allot it to the owner.

6. The second case arises when the owner is in occupation of a portion of the accommodation and the other portion falls vacant on a tenant vacating it. Rule 7 provides that, in such a case the owner shall be consulted and the portion, which has fallen vacant, shall 'so far as possible' be allotted in accordance with the wishes of the owner, that is to say, to the owner for his personal use or to a tenant of his own choice. The words "so far as possible" are important. The Rent Control and Eviction Officer has not an absolute discretion in the matter. He is directed to make the allotment

ordinarily according to the wishes of the owner. The reason is that since the owner is in occupation of a portion of the house, he may be disturbed by the person whom he may not like to come and occupy another portion of the same accommodation. Ordinarily, if the owner objects to the allotment being made to a particular person, the Rent Control and Eviction Officer will not make the allotment to that person. When the owner wishes to bring the remaining portion for his own occupation; the Rent Control and Eviction Officer will ordinarily allot the accommodation to the owner. Under Rule 7, it is not required of him to investigate whether the accommodation "is bona fide needed by the landlord for his own personal occupation." This is a requirement under Rule 6 which applies to cases when the owner is not in occupation of any portion of the accommodation. But if the Rent Control and Eviction Officer is satisfied that the owner does not want to live in the accommodation himself but wants to let it out to persons surreptitiously, he will be justified in allotting the vacant portion to some one else. When the owner wishes that the allotment be made to a tenant of his own choice, the wishes shall ordinarily be respected by the Rent Control and Eviction Officer.

7. The third contingency provided for by the rules is contained in Rule 8 which deals with accommodations which were not let out in the ordinary course before January, 1951. We are not concerned with that contingency in the present case as the accommodation was let out in 1948 when the petitioner had purchased the house. The finding of the Rent Control and Eviction Officer, in the present case, shows that the accommodation which had fallen vacant, was not needed by the petitioner for her own personal use, but that she wanted to let it out to persons surreptitiously. The petitioner did not mention that the accommodation may be let out to a particular person of her own choice. In these circumstances, the Rent Control and Eviction Officer could validly allot it to a third person, namely to Govind Ram who was the only person before him. One Badhawa Mal wanted the house to be let out to him at a very late stage but he did not state that he was the person whom the petitioner wanted to occupy the portion. We do not think that, in the circumstances of the present case, we would be justified in interfering with the order of the Rent Control and Eviction Officer.

8. The petition has no force and is dismissed, but in the circumstances of the case we make no orders as to costs.