

## **Jang Bahadur vs Dist. Magistrate, Banaras And Ors. on 4 January, 1954**

**Equivalent citations: AIR1954ALL745, AIR 1954 ALLAHABAD 745**

**Author: V. Bhargava**

**Bench: V. Bhargava**

ORDER

V. Bhargava, J.

1. On 18-5-1950 a decree for ejectment of one Nand Lal tenant from shop No. CK25/8 mohalla Kaghzi Tola, Banaras was obtained by the landlord Krishna Chaitanya Goswami from the court of the II Additional Civil Judge, Banaras. On that very day the petitioner Jang Bahadur presented an application to the Assistant Rent Control and Eviction Officer for allotment of that shop in his favour. No order of allotment was passed on that application and on the 11th July 1950 the landlord sent an application dated 3rd July 1950 to the Assistant Rent Control and Eviction Officer, Banaras nominating opposite party No. 4 Faujdar Rai, as tenant of the shop under Rule 4 of the Rules framed under Section 17 of the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 and requesting the Assistant Rent Control and Eviction officer to pass an order of allotment in favour of Faujdar Rai.

On the 11th July 1950 the petitioner Jang Bahadur also made another application in the prescribed form requesting that the shop be allotted to him as it had actually fallen vacant. There were various other persons also who wanted allotment of that shop in their favour. The Assistant Rent Control and Eviction Officer first passed an order directing the landlord not to let out the shop to any one without his order and then on the 3rd August 1950 held that Faujdar Rai, who had occupied the shop in the meantime, was an unauthorised occupier and was liable to be ejected from the shop. The Assistant Rent Control and Eviction Officer came to this view after holding that the vacancy had not been intimated to him by a letter alleged to have been sent by the landlord on 5-7-1950 and consequently no right had accrued to the landlord to nominate a tenant of his own choice under the rules.

On 12-8-1950 the Assistant Rent Control and Eviction Officer passed an order of allotment in favour of Jang Bahadur. On the same day Faujdar Rai moved the Additional District Magistrate seeking reversal of the order of the Assistant Rent Control and Eviction Officer making the allotment in favour of Jang Bahadur. The Additional District Magistrate stayed operation of the order of the Assistant Rent Control and Eviction Officer. On 1-9-1950 the landlord applied to the Additional District Magistrate asking for the stay of the order passed by the Rent Control and Eviction Officer

directing possession to be given to Jang Bahadur.

On 25-10-1950 the Additional District Magistrate dismissed the application of Faujdar Rai for reversing the order of the Assistant Rent Control and Eviction Officer on the ground that that application had been presented directly to him and had not been received by him on transfer from the District Magistrate. Thereupon on 26-10-1950 Faujdar moved an application before the District Magistrate. This application was entertained by the District Magistrate who delegated his authority to the Additional District Magistrate and sent the application to him for disposal. The Additional District Magistrate after hearing parties passed an order on the 6th December 1950 setting aside the order of allotment passed in favour of Jang Bahadur and directed that the shop in question be allotted to Faujdar Rai.

On 8-12-1950 the petitioner moved the District Magistrate to vacate the order of the Additional District Magistrate dated 6-12-1950. This application was rejected by the District Magistrate on 25-4-1951 with an order that he could not entertain an appeal or revision and if a review of the order of the Additional Magistrate was sought the application should be presented direct before the Additional District Magistrate.

While these proceedings were going on before the Additional District Magistrate and the District Magistrate the Assist. Rent Control and Eviction Officer had also started proceedings under Section 7A of the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 for ejectment of Faujdar Rai from the shop in question. These proceedings also terminated after the order of the Additional District Magistrate dated 6-12-1950. This writ petition has been presented by Jang Bahadur challenging the competence of the District Magistrate and the Additional District Magistrate to pass the orders dated 25-4-1951 and 6-12-1950 and the validity of those orders with a request that these orders be quashed by issue of a writ of certiorari and the enforcement of those order be stopped.

2. I consider that in this case the claim of the petitioner may first be properly examined on merits. The petitioner first applied on 18-5-1950 for allotment of the shop in his favour. On that date admittedly the shop was not vacant and the application for allotment was, therefore, premature. His next application was presented on 11-7-1950 and it appears that even on that date the shop was no longer vacant as it had been occupied by Faujdar Rai.

The landlord contended that the shop had actually fallen vacant on 29-5-1950 and he gave notice of the vacancy to the Assistant Rent Control and Eviction Officer on the 1st June. He sent the letter under a certificate of posting. During the proceedings before the Assistant Rent Control and Eviction Officer, the landlord produced that certificate of posting which mentioned that the certificate related to a letter sent by the landlord to the Assistant Rent Control and Eviction Officer and related to shop No. CK25/8. The Assistant Rent Control and Eviction Officer held that letter intimating vacancy had not been received by him.

3. But the learned Additional District Magistrate in reviewing the order of the Assistant Rent Control and Eviction Officer came to the view that the letter had really been sent and must have

been received by the Assistant Rent Control and Eviction Officer on 2 or 3-6-1950. It also appears that on merits the view taken by the learned Additional District Magistrate is more sound. The likelihood is that the letter was received in the office of the Assistant Rent Control and Eviction Officer and was probably misplaced there.

The suggestion that the certificate of posting related to some other matter seems to have no force as the Assistant Rent Control and Eviction Officer was not able to produce any other letter from the landlord which might have been sent under that certificate and which may have related to some other matter. In these circumstances no allotment was made by the Assistant Rent Control and Eviction Officer within one month of the receipt of the notice of vacancy. The landlord had a right to nominate his own tenant and to send that nomination to the Assistant Rent Control and Eviction Officer. This the landlord did. Thereupon it was incumbent on the Assistant Rent Control and Eviction Officer either to make an allotment in favour of some other person forthwith for reasons to be recorded in writing or to make allotment in accordance with the wishes of the landlord.

The Assistant Rent Control and Eviction Officer did not forthwith make allotment in favour of any person. In fact he passed no order of allotment until 12-8-1950, though on 3-8-1950 he held that the occupation by Faujdar Rai was unauthorised. Clearly the order of allotment passed on 12-8-1950 was not in accordance with law.

4. When on receipt of the nomination of the landlord on 11-7-1950, the Assistant Rent Control and Eviction Officer did not forthwith make an order in favour of any other person he was bound under law to pass an order of allotment in favour of the landlord's nominee Fauzdar Rai, and in not making such an order he neglected to carry out his duties enjoined by the statute. The order of the Additional District Magistrate dated the 6th December 1950 was therefore merely a correction of the error which had been committed by Assistant Rent Control and Eviction Officer inasmuch as he passed an order that should have been passed under the law by the Assistant Rent Control and Eviction Officer. On merits, therefore it is clear that the order of the Additional District Magistrate which is being challenged by this writ application is really a correct and valid order under the law and is eminently just and proper.

5. The contention of learned counsel for the petitioner is that the Additional District Magistrate had no jurisdiction to pass the order of 6-12-1950 as the matter was being dealt with by the Assistant Rent Control and Eviction Officer acting as District Magistrate under the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 and the Additional District Magistrate could not exercise any powers of appeal or revision against the orders passed by the Assistant Rent Control and Eviction Officer in his capacity as District Magistrate under that Act.

The proposition that the District Magistrate or the Additional District Magistrate could not appropriate to himself the powers of appellate or revisional authority in respect of the orders passed by the Assistant Rent Control and Eviction Officer must be accepted. But it appears that in this case what the Additional District Magistrate did was not to exercise any powers of appeal or revision. The Additional District Magistrate as well as the Assistant Rent Control and Eviction Officer were both persons to whom the District Magistrate had delegated his authority under the United Provinces

(Temporary) Control of Rent and Eviction Act and they exercised concurrent powers. It was in these circumstances that the Additional District Magistrate reviewed the order of the Assistant Rent Control and Eviction Officer. Learned counsel urged the Additional District Magistrate had no such powers of review and for this proposition relied on a decision of a division Bench of this Court in -- 'R. N. Seth v. Girja Shankar Srivastava', AIR 1952 All 819 (A).

It, however, appears that that case related to an order which was passed by the District Magistrate purporting to revise the order of an officer to whom he had delegated his authority under the United Provinces (Temporary) Control of Rent and Eviction Act. The District Magistrate did not purport to review the order. It is obvious that if two officers exercise the same power one cannot revise the order of another. But if the jurisdiction is concurrent, it may be possible for one to review the order of another. The question whether the District Magistrate could review an order passed by the Rent Control and Eviction officer who exercised powers under delegation from him came up. before another Bench in--'Shri Chandra Bhan v. Rent Control Eviction Officer, Agra', AIR 1954 All 6 (B), but the learned Judges left this question open and said that it was unnecessary for them to express an opinion on the question whether a valid allotment order can be reviewed either by the officer who makes it or by a higher executive authority.

In this case before me also, it appears to be unnecessary to decide this question for the purposes of this writ application. I have already expressed my opinion above that the orders which were passed by the Assistant Rent Control and Eviction Officer on the 3rd August and 12th August 1950 were against law and incorrect orders and they were corrected by the Additional District Magistrate by this order dated the 6th December 1950. Further, the order of the 6th December 1950 was the just and proper order which should have been passed in the circumstances of this case.

In these circumstances it does not appear to be necessary to exercise the discretionary powers under Article 226 of the Constitution in this case to interfere with that order even if technical grounds may exist indicating that the Additional District Magistrate could not have passed that order. Faujdar Rai is already in possession of the shop and the orders passed in favour of the petitioner dated 3 & 12-8-1950 were never given effect to. Faujdar Rai has thus been in possession of this shop for about three and a half years already and according to law he was the person who should have been in possession. The Assistant Rent Control and Eviction Officer was not entitled to make an order of allotment in favour of Jang Bahadur. Consequently I do not think that this is a proper case where I should go into the validity of the order of 6-12-1950 and set it aside on some technical or legal ground.

The writ petition must, therefore, fail and is dismissed with costs. The costs of the first three opposite parties who were represented by the learned Standing Counsel are fixed at Rs. 80/-and of opposite party No. 4 at Rs. 51.