

# **Ram Lakhan Lal vs Addl. Commr., Gorakhpur And Anr. on 11 March, 1954**

**Equivalent citations: AIR1954ALL606, AIR 1954 ALLAHABAD 606**

**Author: V. Bhargava**

**Bench: V. Bhargava**

ORDER

V. Bhargava, J.

1. By this petition under Article 226 of the Constitution the petitioner seeks the issue of a writ of certiorari quashing the order passed by the Additional Commissioner, Gorakhpur on 22-12-1953.

2. According to the petitioner, one Hari Saran Rastogi was the tenant of a shop owned by the petitioner and the tenant was carrying on a business in that shop under the name and style of "Golden Biscuit Factory". Hari Saran on 1-7-1953 intimated to the Rent Control and Eviction Officer, Gorakhpur that he had sold the entire goods of the shop along with its goodwill to opposite party No. 2, Hanuman Prasad. Even before this intimation was sent by Hari Saran, an application had been made on behalf of a firm, Mata Prasad Ajodhya Prasad, for allotment of this shop in their favour, The petitioner also applied for its allotment and a third application for allotment was made by Hanuman Prasad, the purchaser of the Golden Biscuit Factory.

While these applications were pending, Hari Saran Rastogi actually left the premises and, before any allotment order could be passed, opposite party No. 3 filed a suit in the court of the Munsif, Gorakhpur for an injunction restraining the petitioner from ejecting him from the premises and from obstructing him from carrying on business in that shop. In connection with this suit, the learned Munsif passed an 'ad interim' injunction restraining the petitioner from ejecting opposite party No. 3. That 'ad interim' injunction was confirmed by the learned Munsif to remain in force during the pendency of the suit and has been challenged in appeal by the petitioner. On 21-9-1953, the Additional District Magistrate heard the various applications for allotment and- recorded an order in which he said:

"The shop will therefore be allotted to Sri Ram Lakhan. Another applicant Sri Ram Swarath, could have been allotted this shop because he is on the priority list but as' remarked above the needs of the owner carry more weight than Ram Swarath's claim. The file is returned to R. C. & E. O. for taking further action according to law."

Against this order opposite party No. 3 filed a revision before the Commissioner and the Additional Commissioner on 22-12-1953 vacated that order of the Additional District Magistrate dated 21-9-1953. By this petition the petitioner seeks the vacation of the order of the Additional Commissioner dated 22-12-1953 on the ground that he had no jurisdiction to pass such an order.

3. When this petition came up for hearing, the petitioner was given time to file a supplementary affidavit to indicate which officer could exercise the powers of a District Magistrate under the U. P. (Temporary) Control of Rent and Eviction Act of 1947 in respect of this shop. He has filed a supplementary affidavit indicating that the powers can be exercised by the Additional District Magistrate who has been authorised by the District Magistrate and not by the District Supply Officer, Gorakhpur who is also known as the Rent Control and Eviction Officer there. In addition, learned counsel for the petitioner has put up before me today an order issued under Section 7(1) of the U. P. (Temporary) Control of Rent and Eviction Act, 1947 allotting this shop to the petitioner.

4. On going through all these documents, it is perfectly clear that so far as the order of the Additional Commissioner is concerned, it has not been passed in exercise of any statutory powers, nor does it interfere with any statutory order passed by the Additional District Magistrate. The order of the Additional District Magistrate dated 21-9-1953 is not an order under Section 7, U. P. (Temporary) Control of Rent and Eviction Act. The order under that section is the order dated 24-9-1953 which was presented before me today by learned counsel for the petitioner.

It has been clearly held by a Division Bench of this Court that a finding of a District Magistrate or Additional District Magistrate that the accommodation should be let out to a particular person is not an order under Section 7 of the U. P. (Temporary) Control of Rent and Eviction Act. It is actually an order directing the owner of the accommodation to let it out to the allottee that is an order under Section 7 of the Act. The order of 21-9-1953 which did not contain any such direction to the landlord to let out the shop to the petitioner was not, therefore, an order under Section 7. That can only be treated as an expression of opinion of the Additional District Magistrate giving his reasons why he would, in future, pass an order under Section 7 in favour of the petitioner. That is also precisely why in that order all that the Additional District Magistrate said was that "the shop will be allotted to Sri Ram Lakhan". That order not having any statutory force, no order by the Additional Commissioner setting it aside has statutory force either and consequently there is no question of any petition being entertained for a writ to quash that order. The order having no statutory force can be ignored.

5. It appears in fact, that in this case there has yet been no valid order under Section 7 directing the landlord to let out this shop to the petitioner, The order of 21-9-1953, as I have said earlier, is not the order contemplated by Section 7 of the Act. The order on the paper presented to me today, purporting to be dated 24-9-1953, is an order signed by the Rent Control and Eviction Officer, Gorakhpur for the Additional District Magistrate. According to the supplementary affidavit, filed by the petitioner himself, the power under Section 7 in respect of this shop can be exercised by the Additional District Magistrate and not by the Rent Control and Eviction Officer. The principal order under Section 7 itself should, therefore, have been signed by the Additional District Magistrate himself. The Rent Control and Eviction Officer could not sign that order on behalf of the Additional District Magistrate as that would indicate that the order was passed by him under the direction

given to him by the Additional District Magistrate in his order dated 21-9-1953 and such an order by the Rent Control and Eviction Officer would not be valid as he was not authorised to exercise the powers of a District Magistrate in respect of this shop. The petition has, therefore, been filed by the petitioner without any right whatsoever. There is no order in his favour under Section 7 of the U. P. (Temporary) Control of Rent and Eviction Act so far and, while there is no such order, he has no interest in this shop at all in his capacity as an allottee. This is another reason why this petition is not entertainable.

6. The question whether a petition would have lain if a valid order under Section 7 of the Act had already been passed need not be discussed in detail. But it appears that in this case a civil suit is pending in connection with which there is an injunction by the civil court restraining the petitioner from disturbing the possession of opposite party No. 3. Whether it would, in these circumstances be advisable for the Additional District Magistrate at all to pass an order of allotment under Section 7 when that order may not prove of any value at all until the decision of those civil proceedings is a matter to be considered by the Additional District Magistrate. This petition does not lie and it is rejected.

7. The order dated 24-9-1953 which was produced by learned counsel before me today may be returned to him as prayed by him.