

Badri Prasad Tripathi vs District Magistrate And Ors. on 3 March, 1952

Equivalent citations: AIR1952ALL832, AIR 1952 ALLAHABAD 832

JUDGMENT

Agarwala, J.

1. Both these applications arise out of allotment orders passed by the Bent Control and Eviction Officer, Allahabad, in respect of a portion of house No. 83, K. P. Kacker Road, Allahabad. The facts briefly are as follows :

2. House No. 83, K. P. Kacker Road, Allahabad, is a big house. A portion of it was in the occupation of one Sri Sri Nath Pathak, advocate. It is said that Sri Sri Nath Pathak was building another house of his own, intended to shift in it and to vacate the portion in dispute occupied by him. Before, however, he had vacated the house, applications were made to the Rent Control and Eviction Officer for its being allotted to the respective applicants. It appears that there were three applicants in the field. One was Badri Prasad Tripathi, the applicant in case No. 7815 of 1951. The second was one Sri Banwari Lal and there was a third applicant also. The Rent Control and Eviction Officer passed an order on 12-3-51 allotting the portion occupied by Sri Sri Nath Pathak to Badri Prasad Tripathi. According to Badri Prasad Tripathi, he occupied a portion of this portion on 19-3-1951 as Sri Sri Nath Pathak had vacated a portion of the portion in his occupation by that time.

3. The landlord Sri Badri Prasad (not to be confused with Badri Prasad Tripathi) got scent of this order and applied to the Rent Control and Eviction Officer for cancellation of the order. He wanted that the house may be allotted to himself. The Rent Control and Eviction Officer made an inspection of the locality and came to the conclusion that the needs of the owner could be fulfilled by the house in which he was living at the moment and by an order dated 29-5-1951 confirmed his previous order of 12-3-1951 allotting the house to Badri Prasad Tripathi. The landlord then moved the District Magistrate requesting him to look into the matter and to cancel the order of the Rent Control and Eviction Officer. If the District Magistrate had already delegated his power under the Rent Control and Eviction Act to the Rent Control and Eviction Officer, he had obviously no power to cancel the order passed by that officer under Section 7 of the Rent Control and Eviction Act. The District Magistrate passed on the application to the Rent Control and Eviction Officer and it seems that he orally suggested that the application of Banwari Lal be also considered by the Rent Control and Eviction Officer in this connection. The Rent Control and Eviction officer thereupon passed an order, which is the subject-matter of dispute in the two writ applications before us, on 23-7-1951 cancelling his previous orders of 12-3-1951 and 29-5-1951 and allotting the house to Banwari Lal.

4. It may be stated that it is apparent from the orders passed by the Rent Control and Eviction Officer and it is admitted before us by the parties that the entire portion of the house occupied by Sri Sri Nath Pathak had not been vacated when these orders were passed by him. It is nobody's case that a portion of the portion in the occupation of Sri Sri Nath Pathak could be separately allotted to any party. In fact the Rent Control and Eviction Officer himself stated in his order of 23-7-51 that the portion occupied by Sri Sri Nath Pathak could not be further sub-divided. The prayers of Badri Prasad Tripathi and of the landlord Badri Prasad are that the order of 23-7-51 be quashed. Badri Prasad Tripathi further prays that the previous orders of 12-3-51 and 29-5-51 be sustained.

5. As already stated the whole accommodation had not fallen vacant. Section 7, Rent Control and Eviction Act under which various orders were passed comes into play only when an accommodation is or has fallen vacant. Since the accommodation had not fallen vacant, the three orders passed by the Rent Control and Eviction Officer were invalid.

6. The result, therefore, is that we quash all the three orders passed by the Rent Control and Eviction Officer. If and when the accommodation falls vacant, it would be open to the Rent Control and Eviction Officer to make a fresh allotment.

7. In the circumstances of the case we order that the parties should bear their own costs.