

Chandra Bhan vs The Rent Control And Eviction Officer, ... on 23 July, 1953

Equivalent citations: AIR1954ALL6, AIR 1954 ALLAHABAD 6

JUDGMENT

Mootham, J.

1. This is a petition under Article 226 of the Constitution.
2. The essential facts in an involved chain of circumstances are the following :

One Suraj Bhan Jain, who is the father of the petitioner, was the owner of certain premises in Agra. On 23-2-1950, he informed the Rent Control and Eviction Officer, Agra, that the portion of the premises which was occupied by Sri Genda Lal Jain was about to be vacated, and he asked that that portion of the house be allotted to the petitioner.

3. On 15th April Suraj Bhan Jain moved an application before the same Officer in which he stated that as more than thirty days had passed from the date upon which he had informed that officer of the existence of the vacancy, and as no allotment had been made, he nominated the petitioner as his tenant in respect of the vacant portion of the premises. No action having been taken on either of these applications, Suraj Bhan Jain made a further application on 2nd May, and on 3rd June the Rent Control and Eviction Officer made the following endorsement on the application :

"Allotted to Chandra Bhan Jain. Issue allotment order". No allotment order was in fact issued.

4. On 6th June, the Rent Control and Eviction Officer cancelled his order of the 3rd June and issued an allotment order in respect of the same accommodation in favour of respondent No. 4, B. L. Kapoor.
5. On 19th September the Additional Commissioner Agra, quashed the allotment order of 6th June and directed the District Magistrate to make a further enquiry.
6. On 14-12-1950, the District Magistrate directed that the accommodation be allotted to the petitioner, and on the 22nd December an allotment order was issued.
7. On 22nd January 1951, the Additional Commissioner cancelled the District Magistrate's order of 14th December and the allotment order of 22nd December and again referred the case back to the

District Magistrate.

8. On 5th April the District Magistrate decid-

ed that the accommodation should be allotted to the petitioner, but no allotment order was made.

9. Finally on 21st May the Additional Commissioner set aside the District Magistrate's order of 5th April.

10. In these circumstances the petitioner has come to this Court, and he asks for the following reliefs: first, for the issue of a writ in the nature of certiorari to quash the order made by the Additional Commissioner on 21-5-1951; and, secondly, for the issue of a writ in the nature of mandamus to compel the Rent Control and Eviction Officer, Agra, and the Commissioner of the Agra Division, to put into effect "the allotment made in favour of the applicant".

11. It was argued on behalf of the petitioner that there was a valid allotment of the accommodation made in his favour on 3-6-1950; that that allotment, once made, could not subsequently be revoked; and the allotment order of 6th June in favour of Kapoor was consequently invalid; that alternatively the allotment order of 22-12-1950, is a good and subsisting order; and, in the further alternative, that on the basis of the order of the District Magistrate of 5-4-1951, he is entitled to have an allotment order prepared in his favour.

12. In our opinion the authorities concerned failed to observe the provisions of the Rent Control and Eviction Act and have misdirected them-selves as to their powers thereunder, with the result that these long drawn out proceedings, which must have been the cause of much anxiety and hardship to the parties concerned, are vitiated throughout.

13. The first and principal question is whether the endorsement made on 3-6-1950, on the application of the petitioner's father on the preceding 2nd May is an order such as is contemplated by Section 7 of the Control of Rent and Eviction Act.

14. The relevant part of Section 7 (as then in force) was as follows :

"1(a). The District Magistrate may, by general or special order, require a landlord to give information 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."

We are of opinion that, the order for which provision is made in this sub-section must be an order addressed to the landlord requiring him to let or not to let vacant accommodation. This view is supported by the terms of Rule 4 of the rules made under the Act which makes the absence of notice to the landlord the prerequisite to the operation of the rule. We do not think that the order made by the Rent Control and Eviction Officer on the 3rd June was such an order.

The terms of the order, namely "Allotted to Chandra Bhan Jain. Issue allotment order", make it clear, we think, that it was not an order addressed to the landlord at all but was in the nature of an administrative order directed to a Subordinate official in the Magistrate's office instructing him to prepare an allotment order directing the landlord to let accommodation. The petitioner says that he was informed of the order at the time it was made, but we are unable to see that this makes any difference. We think it to be important for the due administration of the Control of vacant accommodation that the provisions of this sub-section should be strictly complied with, otherwise much confusion and uncertainty may arise.

15. In the view we take as to the nature of the order made on the 3rd June, it was not necessary to consider the date upon which the accommodation was vacated by the previous tenant or tenants; but this question is one which becomes vital when we turn to a consideration of the validity of the order made on 6th June. There are two statutory requirements which must be borne in mind, first, under Section 7(1) of the Act an order of allotment cannot be made until after the accommodation has fallen vacant -- 'Badri Prasad Tripathi v. District Magistrate', AIR 1952 All 832 (A), secondly, Rule 4 provides that if the District Magistrate does not allot the accommodation within thirty days of the receipt by him of an intimation given by the landlord under Section 7(1) that the accommodation is vacant, the landlord himself may nominate a tenant and the District Magistrate must allot the accommodation to that nominee unless, for reasons to be recorded in writing, he forthwith allots the accommodation to some other person.

Now, unfortunately, there is the widest conflict of evidence as to the date upon which the accommodation in this case became vacant. The petitioner swears that the premises were vacated by the previous tenant by the end of February, 1950, and in this, he is supported by his father Suraj Bhan, and by Suraj Mal and Panna Lal who are occupants of other portions of the premises in which is situated the accommodation in dispute. Kapoor on the other hand swears that the accommodation was not vacated until 7th June. If this is true, it is of course manifest that the allotment order made on the previous day in his favour is invalid. If on the other hand the accommodation was vacated by the end of February then under Rule 4 the petitioner was *prima facie* entitled to have the accommodation allotted to him.

16. The order made by the Rent Control and Eviction Officer on 6-6-1950, was as follows: "Appeared and heard. The house has not been vacated till today. The landlord had no business to inform that the house has fallen vacant. He should be asked to report why he should not be prosecuted by giving false information. In supersession of all previous orders the house is allotted to Sri B. L. Kapoor." This order it appears was made 'ex parte' (paragraph 11 of the petitioner's affidavit and paragraph 10 of the counter-affidavit sworn on the 22nd October, 1951) and in making it the Rent Control and Eviction Officer appears wholly to have overlooked the importance, in view of the petitioner's father's applications of 15th April and 2nd May, 1950, of determining with some care the date upon which in fact the accommodation fell vacant.

17. We think that when the Rent Control and. Eviction Officer decides a question of fact the re-suit of which determines the right of a person to the benefit of Rule 4, he acts in a quasi-judicial capacity. Although the act of issuing an allotment order may be administrative act, the consideration which

must precede the doing of that act in a case (such as the present) in which the rights of one party depend upon the existence of a particular state of facts is of the nature of a quasi-judicial consideration. He cannot make that decision in his discretion but must reach his conclusion after hearing the persons whose rights are likely to be affected and after giving them a full opportunity of placing their case before him. This has not been done in the present instance and the order of the 6th June cannot therefore, in our opinion, be sustained.

18. We turn now to the allotment order made in favour of petitioner on 22-12-1950. That order also, in our opinion, cannot stand, for it is we think clear that it was passed only upon a consideration of the claims of the petitioner and not upon a determination of the merits of the respective claims of the petitioner and Kapoor. We have already said that by an order of the 19-9-1950, the Additional Commissioner, Agra, purported to quash the allotment order of 6th June and remanded the case to the District Magistrate for further consideration.

In his order the Additional Commissioner expressed the view that Kapoor had been unjustly installed in the premises; this expression of opinion was understood by the District Magistrate to imply that his inquiry was to be limited to a consideration of the question whether or not the petitioner was a fit person to whom the accommodation should be allotted. This is clear, we think, from the following extract from the order of the District Magistrate made on the 14th December which was the foundation of the allotment order issued on 22nd December :

"It (that is, the order of the Additional Commissioner of the 19th September) further says that the allottee Sri B. L. Kapoor has been unjustly installed there by the Rent Control and Eviction Officer with police help'. It seems to me quite clear, in view of this, that Sri B. L. Kapoor cannot be allowed to retain that house. The only question is whether Sri Chandra Bhan was a suitable person to be allotted this house, or whether the house should be reallocated to a third party."

19. Finally, there remains to be considered the effect of the District Magistrate's subsequent order of 5-4-1951, in which he again decided that the accommodation should be allotted to the petitioner. The District Magistrate concluded his fairly long order with the following words :

"I hold that the house should be allotted to Sri Chandra Bhan. He should be given possession after two weeks from date and Sri B, L. Kapoor should be notified at once."

That order was not followed by the issue of any allotment order to the landlord nor indeed does any action appear to have been taken to implement it, for Kapoor took the order in revision to the Additional Commissioner who, as we have said, purported to set it aside by his order of the 21st May, 1951.

20. We are therefore of opinion that no valid allotment of the accommodation has been made either to the petitioner or to Kapoor, and it is consequently unnecessary for us to express an opinion on the question whether a valid allotment order can be revoked either by the officer who makes it or by a

higher executive authority. In our opinion, the matter must go back to the Rent Control and Eviction Officer who must, upon a consideration of all the circumstances, make a fresh order of allotment, bearing in mind the provisions of the Act and the rules made thereunder.

21. As we have held that the order of the District Magistrate made on 5-4-1951, which the Additional Commissioner purported to quash by his order of the 21st May following does not constitute an order of allotment within the meaning of Section 7 of the Act, it is not necessary to direct the issue of a writ quashing the latter; and as we have held that there is no subsisting order of allotment in favour of the petitioner no writ -of mandamus can issue. The petition is therefore dismissed out there will be no order as to costs.