

Jangi Lal vs Rent Control And Eviction Officer, ... on 27 August, 1953

Equivalent citations: AIR1954ALL126, AIR 1954 ALLAHABAD 126

JUDGMENT

Malik, C.J.

1. There is no force in this writ application and it must fail. This application has been filed against an allotment order made by the Town Rationing Officer of Allahabad allotting the ground-floor of a certain premises to the opposite party No. 2, Narbada Prasad. The house was rented out in two portions, the ground-floor being in the occupation of one Ram Autar and the upper portion being in the occupation of another tenant. The landlord was living in another house at some distance from this house. The landlord filed a suit No. 485 of 1949 under Section 3 of the U. P. Temporary Control of Rent and Eviction Act, 1947, and obtained a decree. In execution of the decree Ram Autar was ejected in April 1953. After the ejectment of Ram Autar, the groundfloor became vacant and it could be allotted to a tenant under the Rent Control and Eviction Act. The applicant, however, took possession of the premises and after the allotment order was made by the Town Rationing Officer on 4-5-1953, he raised certain objections which were disallowed and he has now filed this writ petition.

2. Learned counsel for the applicant has raised two points: Firstly, that the Rent Control and Eviction Act could not apply to the ground-floor as the portion was not vacant, the applicant having taken possession of it in execution of the decree. The second point urged is that under Rule 7 framed under Section 17 of the U. P. Temporary Control of Rent and Eviction Act the Town Rationing Officer was bound to take the wishes of the landlord into consideration.

3. Neither of these contentions, however, has any force. If the tenant had left of his own accord and the premises had fallen vacant, the vacant premises could be allotted to a tenant or to the landlord himself, if he wanted to occupy the premises, with the permission of the District Magistrate. In such a case it was not open to the landlord, without the permission of the District Magistrate, to occupy the premises and claim that he was not liable to ejectment under Section 7-A of the Act. To premises to which Section 7 of the Act applies even the landlord's right, on the premises falling vacant, is subject to the orders of the District Magistrate and it is not open to the landlord either to let out the premises to a new tenant without an allotment order or even to step in and occupy it without the permission of the District Magistrate.

We see no difference between such a case and a case like the present where the premises fell vacant as the tenant had to leave by reason of a decree for ejectment passed by a court of law. The delivery

of possession by the civil Court was to the applicant merely as the owner of the premises and his right to occupy it was governed by the provisions of the U. P. (Temporary) Control of Rent and Eviction Act. The landlord could not therefore, occupy the premises in contravention of the provisions of the said Act and claim that the Town Rationing Officer had no authority to make an allotment in favour of the opposite party No. 2.

4. Reliance is placed on Rule 7 and it is said that before making the allotment the Town Rationing Officer was bound to consult the wishes of the applicant. Rule 7 of the U. P. (Temporary) Control of Rent and Eviction Act is as follows:

"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."

It cannot be said that the applicant was in the occupation of another portion of the premises at the time of the allotment. The possession taken by the applicant in execution of the decree being wholly illegal, it cannot be said that he was in the occupation of a part.

Moreover, this rule applies to a case where a part of the premises is in the occupation of the owner and the other part is let out to tenants. The rule provides that the wishes of the landlord are to be consulted so that the unwelcome or a troublesome tenant may not be forced on the landlord and thus cause him inconvenience when he is occupying a part of the house. The cases relied upon by the learned counsel, namely, -- Ram Katori v. Rent Control officer', AIR 1953 All 543 (A) and -- 'Chandra Bhan v. The Rent Control Officer', AIR 1904 All 6 (B), deal with the question as to when a house should be deemed to be vacant and are distinguishable. They are not relevant to the case before us.

5. The application has no force and is dismissed.