

Ram Narain Tewari vs Ram Chander Sharma And Ors. on 16 December, 1952

Equivalent citations: AIR1953ALL354, AIR 1953 ALLAHABAD 354

JUDGMENT

Sapru, J.

1. This application has been presented on behalf of Sri Ram Narain Tewari's trust by his managing trustee, Har Narain Swami. The dispute relates to house No. 60/8 Purani Dal Mandi, Kanpur. Of this house the trust is admittedly the owner. According to the case put forward by the trust in the affidavit, which has been filed on behalf of it by Lokendra Bahadur, the pairokar of the trust, the trust was occupying a substantial portion of this house. The other portion was in the occupation of one Shyam Lal Yaid. He died and his nephew had to leave the house.

2. It is necessary to go into the circumstances which compelled him to leave the house. On the house being vacated the trust started, according to the affidavit filed by it, immediately taking occupation : and wrote to the Rent Control and Eviction Officer on 10-9-1951, that it had started occupying the house. An application was also sent by the trust to the Rent Control and Eviction Officer for the allotment of that portion to it.

The Rent Control and Eviction Officer did not, however, allot that portion to the trust. An allotment order was, however, made by him in favour of opposite party No. 1 on the ground that the need of the applicant was most genuine.

In passing this order the Rent Control and Eviction Officer overlooked the provisions of Rules 6 and 7 framed under Section 17, Rent Control and Eviction.

Act. Rule 6 requires the District Magistrate to permit the landlord to occupy an accommodation which has fallen vacant or is likely to fall vacant if it is bona fide needed by him (i. e. the landlord). There is nothing to show in the order which was passed by the Rent Control and Eviction Officer, that he exercised his mind on the point whether the need of the landlord was of a bona fide character or not. The sole consideration with him appears to have been the fact that the need of the applicant was most genuine. To the question whether the need of the landlord, which was a trust in this case, was of a bona fide charac-

tor, he did not apply his mind at all.

3. The second error into which the Rent Control and Eviction Officer has fallen is this.

Un-doubtedly a portion of this house was in the occupation of the landlord, for it was in the occupation of the agents of the trust. Their occupation was on behalf of the trust landlord. Before passing any order in regard to the allot-ment of that portion, it was obligatory on the Rent Control and Eviction Officer under Rule 7 framed under Section 17 of the Act to consult the owner and to make, as far as possible, the allotment in accordance with the wishes of the owner. The purpose behind this rule appears to be to provide an opportunity to the landlord to have his say in regard to any proposed allotment of his house. Possibly, this rule has been enacted as it is intended that a person, who is unacceptable to the landlord, should not be forced upon him if he, i.e., the landlord, is occupying a portion of the house himself. In any view of the case it was incumbent on the Kent Control and Eviction Officer to consult the landlord before proceeding to make arrangements in regard to the vacant accommodation and this he has failed to do in this case.

4. Looking, therefore, at the case from the point of view of both Rules 6 and 7, we have been driven to the conclusion that the order of the District Magistrate cannot be allowed to stand. There is, as we have pointed out, no real controversy as regards the facts. We, therefore, sot aside the order of the Kent Control and Eviction Officer dated 15-10-1951, and direct him to re-allot the disputed portion of the house after consulting the landlord. He must in doing so keep in view the provisions of Rules 6 and 7 of Section 17, Rent Control and Eviction Act. We allow this application with costs.

5. We have looked at the counter-affidavit filed on behalf of the opposite parties and are satisfied that a denial of the facts stated in para. 2 of the affidavit cannot be read into it.