

Ram Gopal vs State Of Uttar Pradesh on 11 December, 1952

Equivalent citations: AIR1953ALL438, AIR 1953 ALLAHABAD 438

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is an application under Article 226 of the Constitution by one Ram Gopal Vaish of District Hamirpur. He is the owner of a small three storeyed house, the second storey of which consists of two rooms, one kitchen, one verandah, a latrine and a bath room. Brij Kishore Sub-Registrar was in occupation of the whole of this second storey except one room which was in the occupation of Ram Gopal. On 28-4-1952, Brij Kishore Sub-Registrar was transferred to Karwi and Abdul Rashid Sub-Registrar was posted in his place. The accommodation in the occupation of Brij Kishore was allotted to Abdul Rashid on 29-4-1952, without consulting the applicant, who was the owner of the premises.

2. Learned counsel for the applicant has relied on Rule 7 framed under Section 17, U.P. Temporary Control of Rent and Eviction Act, 1947 (Act 3 of 1947)., The rule 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."

The rule makes the previous consultation obligatory. The Magistrate is required, as far as possible, to make the allotment in accordance with the wishes of the owner. The learned Standing Counsel has, however, urged that this rule does not apply, as the applicant was not sharing that part of the accommodation which had been allotted to Brij Kishore. We do not think that the rule was intended to cover case's in which the owner of a premises shared the portion allotted to a tenant by the Rent Control Officer. Such a case would hardly ever arise.

If the interpretation put by the learned Standing Counsel is accepted, the rule would apply only to a case where the owner of the premises was sharing the same accommodation with the tenant in whose favour the allotment order had been made and the two had vacated the premises together. The rule clearly means that, where a portion of a building has fallen vacant, a part of which building

is occupied by the owner himself, then the wishes of the owner, should be ascertained. The reason is obvious. The owner might like to exclude a troublesome tenant whose presence in another part of the building might seriously inconvenience him.

The word 'accommodation' has been defined in the Act as meaning 'residential and non-residential accommodation in any building or part of a building" Reading the rule as a whole, we feel satisfied that this was a case where the Magistrate was bound to give notice to the owner and consult his wishes before making the allotment order.

3. We, therefore, cancel the allotment order dated 29-4-1952 and direct the Magistrate to make the allotment after complying with Rule 7 mentioned above.

4. The applicant is entitled to his costs of this application.