Supreme Court of India
Masood Ahmad vs The Rent Control And Eviction ... on 16 December, 1971
Equivalent citations: AIR 1972 SC 631, (1972) 4 SCC 654, 1972 (4) UJ 465 SC
Author: G Mitter
Bench: J Shelat, H Khanna, I.D.Dua, G Mitter
JUDGMENT G.K. Mitter, J.

1. This appeal by special leave is from a judgment of the Allahabad High Court rendered in a Special Appeal upholding the order of the State Government dated March 12, 1968 under Section 7-F of the Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1967 cancelling the allotment order of a shop in premises No. 80/79, Banasmandi Copprrganj, Kanpur dated October 21, 1967 made by the Rent Control and Eviction Officer Kanpur in favour of the appellant and releasing the same to the respondent No. 3 before us.

2. The relevant facts are as follows : One Arif Hussain was a tenant of one shop out of eight in the premises mentioned above under respondent No. 3. He used to carry on a business in bamboos and wooden posts. On July 8, 1967 he purported to execute a sale deed transferring his business including its good will and stock-in-trade to the appellant, Masood Ahmed Within three days thereafter the said tenant died leaving a widow. The appellant made an application dated July 23/28 to the Rent Control and Eviction Officer (hereinafter referred to as the 'officer') for allotment of the shop to himself under the provisions of the Act on the strength of his purchase of the business and the stock-in-trade. On enquiry through an inspector, the officer came to learn that the widow was still in occupation. On August 9, 1967 the officer rejected the appellant's application holding that there was no vacancy. On the same day the widow intimated the officer that she would be vacating the shop after the Iddat period. She followed this up by writing to the officer on August 26, 1967 that she had vacated the shop and given possession thereof to the appellant. On September 4 the Officer directed his inspector to enquire and report. On receipt of a letter from the appellant dated the 18th September praying for allotment of the shop on the ground of the widow's having vacated it and his aforementioned purchase, the officer called for a report again. This appears to have been submitted on the 18th September. On 30th September the officer ordered publication of a notification that the shop was vacant. Such a notification was issued on the 4th October. It appears that besides the appellant there was another applicant for allotment of the shop. On 21 st October, 1967 the allotment Committee considered both the applications and recommended allotment to the appellant. On the same day. the officer allotted the shop in term? of the recommendation. On December 8, 1967 respondent No. 3 tiled a revision application under Section 7-F of the Act to the State Government. Therein he stated that the building as a whole was a very old one that two shops adjoining Arif Hussain's were without any roof and in his occupation though vacant and that the whole building required demolition and complete reconstruction. He stated further that he intended to utilise the site by demolishing the old building and constructing a modern cinema hall and a marketing center with office flats and had by letter dated August 24, 1967 asked the officer that in case the shop of Arif Hussain fell vacant it should not be allotted to anybody but released in his favour to enable him to carry out his plan. His further case was that though he had not heard of the result of his application, he came to learn that the officer had passed an allotment order in favour of the appellant on the 2lst October. His complaint was that all this was done behind his back and that

he was being deliberately kept in ignorance of the whole matter. He alleged that he had no knowledge that the shop was being treated as vacant and complained that the illegal occupation of the appellant was being shielded and condoned by the allotment order without considering his own application for release made on the 24th August. The appellant filed his reply to the revision application on January 16, 1968 whereupon Government called for a report from the officer which was submitted on the 23rd January. In this mention was made of the rejection of the first application by the appellant on the ground of the widow's continuance in occupation and it was stated that upon the second report to the effect that the widow had left the shop making over possession to the appellant the shop was declared vacant and notified for allotment. With regard to respondent No. 3 it was said that he had never applied for release of the shop in proper time but had submitted an application by ordinary post ante dated the 24th August, 1967 which was received only on the 13th December. It was asserted further that the landlord had never cared to enquire about the fate of his application. In the premises no notice was required to be given to him of the allotment in favour of the appellant which had been made in due course.

3. The order of the State Government shows that it was made on a perusal of the record. The view taken by the revising authority was that the landlord's release application dated August 24, 1967 "was not considered by the officer as it should have been" and that "the allotment order in favour of the opposite party (the appellant was made to regularise the illegal occupation of the premises in dispute." According to the order "the opposite party was successful in securing an allotment order when he should in tact have been proceeded against under the provisions of the Act for illegal occupation with the assistance of the widow of the former tenant." In the result the State Government set aside the order of allotment and directed release of the accommodation in dispute to the landlord for reconstruction.

4. We may now briefly note the relevant statutory provisions. Orders to control the letting and the rent of accommodation in the Province of UP had been made under Rule 81 ol the Defence of India Ruks. As the said order was to be ineffective with the revocation of the Proclamation of Emergency after 30th September, 1946 the Act of 1197 was passed to provide for the continuance during a limited period of powers to control the letting and the rent of such accommodation and to prevent the eviction of tenants in the Province. Section 2(a) of the Act defines "accommodation ' as meaning residential and non-residential accommodation in any building or part of a building under Section 2(d) 'District Magistrate' includes an officer authorised by the District Magistrate to perform any of his functions under the Act. It appears that the officer is a delegates of the District Magistrate Under Section 3(1) no one could file a suit in any civil court against a tenant for eviction from any accommodation except on one or more of the grounds specified in Clauses (a) to (g) without the permission of the District Magistrate. But this was to be subject to any order passed under Sub-section (3). Under Sub-section (3) the Commissions was empowered to hear applications made under Sub-section (2) and to alter or reverse the order of the District Magistrate if he was not satisfied as to its correctness, legality etc. Under Sub-section (4) the order of the Commissioner under Sub-section (3) was to be final subject to any order passed by the State Government under Section 7 F. Section 7 provided for the control of letting. Under Sub-section (1) Clause (a) of the section every landlord was required within 7 days after an accommodation became vacant by his ceasing to occupy it etc. to give notice of the vacancy in writing to the District Magistrate. Under

Clause (b) every tenant occupying accommodation was under an obligation to give a similar notice in writing to the District Magistrate within 7 days of the vacation of the accommodation by him or his ceasing to occupy it under Sub-section (2) the District Magistrate was empowered by general or special order to require a landlord to let or not to let to any person any accommodation which had fallen vacant or was about to fall vacant. Under Section 7-A the District Magistrate was empowered to take action against unauthorised occupants. Section 7-F provided as follows :

The State Government may call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in Section 3 or requiring any accommodation to let or not to be let to any person under Section 7 or directing a person to vacate any accommodation under Section 7-A and may make such order as appears to it necessary for the ends of justice.

Section 17 empowered the State Government to make rules to give effect to the purposes of the Act.

5. The relevant rules are as follows. Under R. 3 the District Magistrate was to make an allotment order within SO days of receipt of the intimation sent by the landlord under Section 7(1)(a) of the Act and to give notice thereof to him. Rule 6 provided that an accommodation which has fallen vacant or likely to fall vacant is bonafide needed by the landlord for his own personal occupation, the District Magistrate may permit the landlord to occupy himself". Under Rule 7 a duty was a cast on the District Magistrate to consult the owner and as far as possible make the allotment in accordance with the wishes of the owner where a portion of accommodation had fallen vacant and the owner was in occupation, of another portion thereof.

6. The appellant filed his writ petition in the High Court challenging the order of the State Government Inter alia on the following grounds :

1. The landlord's application for release was antedated and was received by the officer on the 15th December, 1967. The State Government's conclusion that his application had not been considered was without any basis or evidence.

2. The landlord's plea of release of accommodation for purposes of reconstruction was not genuine and should not have been accepted by the State Government without investigation.

3. The appellant was never in unlawful possession. He had first applied for allotment soon after the death of the deceased tenant but as his widow was in possession his application was rejected. His second application after the vacation of the premises by the widow was duly made and the Rent Controller had acted lawfully in ordering the allotment in his favour.

7. Neither the learned single judge of the High Court who heard the writ petition in the first instance nor the Bench of the Court hearing the Special Appeal there from accepted the submissions made on behalf of the apppellant.

8. Before us learned Counsel for the appellant made the following submissions :

1. The order of release of the shop in favour of the landlord could be made under the Act only for his personal occupation and could not have been made on the ground that the landlord desired to demolish the building and reconstruct the same.

2. An application for release by the landlord was not entertainable after an order of allotment had been made under Section 7 followed by the occupation of the same by the allottee.

3. The landlord was estopped or debarred from making an application for release once a notification of the vacancy of allotment was made followed by an order of allotment.

4. The order of the State Government under Section 7-F was vitiated as it gave no reasons for rejecting the officer's order.

5. The question of consent of landlord to the accommodation did not arise unless the landlord resided in a part of the premises which was not the case here.

6. Proceedings under Section 7-A cannot be instituted against the appellant as he was allotted the accommodation by the officer and his occupation was not unlawful.

7. The High Court wrongly failed to exercise jurisdiction under Article 226 on the erroneous view that the question as to the exact point of time when the landlord made his application for release or the receipt of the same by the officer was one of fact and could not be gone into by the High Court itself.

9. We are unable to find any merit in any of the submissions made on behalf of the appellant. On the first point, counsel submitted that it being the duty of the landlord and the tenant to notify the District magistrate about the vacancy or the imminence thereof, the District Magistrate could only give preference to the landlord if he was satisfied that the laud lord bonafide needed the accommodation for his personal occupation It was submitted that demolition of the building followed by reconstruction thereof was not within the bonafide need of the landlord covered by Rule 6. Our attention was drawn to a judgment of the Allahabad High Court in H.M. Bux v. Rent Control and Eviction Officer 1958 Allahabad Law Journal 45 where the High Court rejected the contention based on the dictum in an earlier decision in Gada Dhar Prasad Sharma v. District Magistrate Lucknow 1956 ALJ 695 that the landlord was "entitled to preference" under Rule 6 and "unless the Rent Control and Eviction Officer thinks that his need is not genuine in the sense that he does not want to live in the house but wants to take it for somebody else it is incumbent on the Rent Control and Eviction officer to allot the house to the land lord". In the view of the High Court in Bux's case there was no justification for holding that "Except in the case in which the landlord wants the accommodation for the purpose of letting it out to another person, the Rent Control and Eviction Officer is bound to conclude that the need of the landlord is genuine." According to the High Court:

Letting out to another person could not be employed as the sole test for deciding whether the landlord is to be allowed the benefit of the rule.

In our view the decision in Bux's case does not help the appellant before us as the High Court in our view, rightly pointed out that "each case must necessarily depend on its own facts." In this case, the facts are that two shops adjoining the accommodation in question are in the occupation of the landlord and the roof there of has fallen. There is nothing to contradict the landlord's case that the whole building is old and dilapidated and requires to be demolished and that he needed the premises for erecting a cinema house with office accommodation etc. Apparently the State Government was satisfied with this reason. We find ourselves unable to subscribe to the view that even if the building is in a dilapidated condition a portion whereof is without a roof and the landlord wants to put up a cinema there to carry on business he does not require the accommodation bonafide for his personal need.

10. Points (2) and (7) can be disposed of together. Our attention was drawn to the fact that the landlord had made an application for release of the accommodation in his favour as early as 24th August 1967. The letter was sent under certificate of posting bearing the postal mark of that date. We were also referred to annexure 'F' to the counter affidavit of the landlord before the High Court purporting to show that the copy of the address written on the envelope of the letter to the officer bore the postal stamp of 24th August. The State Government had sent for the entire record as well as the report of the officer on the application of the landlord and it was on a scrutiny of the entire facts and circumstances that the Sate Government took the view that the officer had failed to consider the application of the landlord. Nothing has been shown to us as to why we should reject the view of the State Government formed on the material before it. It is evident that the appellant had gone into possession even before the allotment order was made and was trying his best to hold on to it. The allotment order of the 21st October was subject to the revisionary jurisdiction of the State Government under Section 7-F. Very wide powers are given to the State Government under this section and as the State Government directed the cancellation of the allotment in favour of the appellant on a perusal of the record including the report of the officer and the appellant's memorandum putting forward all the grounds urged in his favour, the High Court rightly took the view that order could not be questioned.

11. On the third point, counsel submitted that as the landlord must have been aware of the fact that the tenant was dead and the accommodation had fallen vacant and as he kept quiet even after the notification of vacancy by the Allotment Committee he cannot complain of the allotment in favour of the appellant. Moreover it was urged it was only after the allotment in favour of the appellant that the landlord sought to have an order of release in his favour; in consequence his application should have been thrown out by the State Government. No question of estoppel arises in this case. The State Government did not take the view that the landlord's application was not made on the 24th August and expressly found that the officer had failed to consider it.

12. From the above, it is clear that the order under Section 7-F cannot be questioned on the ground that the State Government had failed to give reasons for rejecting the officer's order. The State Government gave its reasons quite clearly when it noted that the landlord's application had not been considered. The State Government also held that the landlord needed the premises for re-construction. This disposes of point No. (4).

13. In the above view of the matter points (5) and (6) do not call for consideration. The landlord had made an application which was not considered and if his application had been considered, his preferential right could not be ignored. We are not concerned to go into the question as to whether proceedings under Section 7-A can be properly instituted as this did not form the subject matter of the writ petition of the appellant nor was any relief asked for on any such ground.

In the result, the appeal fails and is dismissed with costs.