

Babu Lal

Vs

Sheonath Das

Civil Appeal No. 2271 of 1966

(J. C. Shah, S. M. Sikri, V. Ramaswami-I JJ)

13.12.1966

JUDGMENT

BACHAWAT, J. –

The appellant is the tenant and respondents Nos. 2 and 3 are the landlords of a non-residential accommodation in a part of a building in Mohalla Bulanala in the city of Varanasi. Respondent No. 1 as the allottee of the accommodation. Respondent No. 5 is the Assistant Rent Control and Eviction Officer, Varanasi, authorised by the District Magistrate to perform his functions under the U.P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter referred to as the Act). On February 11, 1956 the landlords obtained a decree for ejectment of the tenant from the accommodation. As the tenant was about to vacate the accommodation, on February 20, 1957, respondent No. 5 passed order under s. 7(2) of the Act directing the landlords to let the accommodation to respondent No. 1. On February 22, 1957, the landlords and the tenant agreed that the tenant would continue to occupy the accommodation at an enhanced rent and would be liable to eviction in execution of the decree for ejectment in the event of his failing to pay the outstanding arrears of rent in certain stated instalments. As the tenant failed to pay the agreed instalments of rent, on May 21, 1957, the landlords in execution of the decree for ejectment obtained an order from the executing court for the issue of a warrant for delivery of possession. In the meantime on February 23, 1957, proceedings were started against the appellant under s. 7A(1) of the Act. By an order dated March 23, 1957, under s. 7A(2) respondent No. 5 directed the tenant to vacate the accommodation by March 24, 1957. By another order dated December 2, 1957, under s. 7A(3) respondent No. 5 directed S.O. P.S. Chowk to evict the tenant and put the allottee in occupation of the accommodation. The tenant filed a writ petition challenging the orders of respondent No. 5. The writ petition was dismissed and the tenant was relegated to a suit. A special appeal from this order filed by the tenant was also dismissed. On September 9, 1958, the tenant filed the present suit asking for a declaration that the orders passed by respondent No. 5 were without jurisdiction and for consequential reliefs. The trial court dismissed the suit. The appellate court reversed this decree and decreed the suit. On second appeal, the High Court restored the decree of the trial court and dismissed the suit. The tenant has now filed this appeal by special leave.

In this appeal the tenant challenges the orders passed by respondent No. 5 under sub-s. (2) of 7 and sub-sections (2) and (3) of s. 7A of the Act. Section 7(2) is in these terms :-

##7. (1) (a)..... (b)..... (c).....##

(2) The District Magistrate may by general or special order require a landlord to let or not to let to any person any accommodation which is or has fallen vacant or is

about to fall vacant."

Under s. 7(2), the District Magistrate can pass an order in respect of an accommodation which is or has fallen vacant or is about to fall vacant. The accommodation must either be vacant or about to fall vacant before he can pass the order under s. 7(2). If the accommodation is neither vacant nor about to fall vacant, when the order under s. 7(2) is passed, the order is void and is without jurisdiction.

Counsel for the tenant submitted that the District Magistrate has no power to pass an order of allotment under s. 7(2) unless the accommodation is or has fallen vacant. This submission is based on a misconception. The District Magistrate can pass an order under s. 7(2) not only when the accommodation is or has fallen vacant but also when it is about to fall vacant. On the materials on the record there can be no doubt that the accommodation was about to fall vacant when respondent No. 5 passed the order under s. 7(2). Before passing the order, he issued notices to the landlords and the tenant. On January 5, 1957, the landlords stated before him in writing that the accommodation was about to be vacated by the tenant. On January 22, 1957, the tenant stated before him in writing that he was going to leave the accommodation in a month's time. On February 12, 1957, the tenant again made a statement before him that he wanted to vacate the shop as the decree for ejectment had been passed against him. The declared intention of the tenant that he was about to vacate the accommodation coupled with the decree for ejectment show that on February 20, 1957, the accommodation was on the point of becoming vacant or was about to fall vacant. As a matter of fact in the courts below the appellant did not contend that on February 20, 1957 the accommodation was not about to fall vacant. His contention was that as the accommodation had not actually fallen vacant, respondent No. 5 had no power to pass the order under s. 7(2).

Counsel next submitted that even though respondent No. 5 might have power to pass an order under s. 7(2) when the accommodation was about to fall vacant, the order could take effect only when the accommodation fell vacant. We cannot accept this contention. The order dated February 20, 1957 directed the landlords to let the accommodation to the allottee. Respondent No. 5 had power to pass this order. The order took effect immediately.

Counsel for the tenant submitted that the proceedings under s. 7A were without jurisdiction. Now the District Magistrate can take action under s. 7A "where an order requiring any accommodation to be let or not to be let has been duly passed under sub-section (2) of section 7 and the District Magistrate believes or has reason to believe that any person has in contravention of the said order, occupied the accommodation or any part thereof". Counsel submitted that as the tenant was in occupation of the accommodation before the passing of the order under s. 7(2), he cannot be said to have occupied the accommodation in contravention of the order. This contention is supported by the decision in *Ram Lal v. Shiv Mani Singh and others* ([1962] A.L.J. 260.), but we cannot agree with the broad statement in this case that the continuance after the allotment order of an occupation previous to the order cannot be an occupation in contravention of the order. It is a question of fact in each case whether a person in occupation of the accommodation since before the allotment order can be said to have occupied the accommodation in contravention of the order, see *A. K. Khandelwal v. Moti Lal Chawla and others*. ([1964] A.L.J. 20) In the instant case after the allotment order was passed, the landlords agreed to accept the appellant as a tenant at enhanced rent. This letting and the continuance of occupation by the appellant under it were in direct breach of the allotment order. In the circumstances, the appellant can well be said to have occupied the accommodation in contravention of the order. The respondent No. 5 had, therefore, jurisdiction to initiate proceedings under sub-section (1) of s. 7A and to pass the orders under sub-sections (2) and

(3) of s. 7A. The propriety of this order cannot be questioned in this suit.

The appeal is dismissed. There will be no order as to costs.

Appeal dismissed.

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