

Ramesh Chandra Misra

Vs

Shri Mahendra Tripathi and Others

Civil Appeal No. 127 of 1976

(P.N. Bhagwati, A.C. Gupta JJ)

19.11.1976

JUDGMENT

GUPTA, J. –

1. This appeal by special leave arises out of a proceeding under the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (referred to hereinafter as the Act). On September 11, 1973 the appellant applied under Section 16(1)(a) for allotment of a part of house no. 98, Lokmanganj, Lucknow. He was in fact in occupation of this portion of the building when he made the application; according to the appellant he had been inducted as a tenant by a person representing that he was the owner of the house, though really he was himself a tenant. On November 24, 1973 the first respondent also applied for allotting the house to him. Subsequently there were two more applicants for the house. The Area Rationing Officer (Rent Control) by his order dated June 4, 1974 allotted the accommodation to the first respondent. The appellant before us preferred an appeal to the District Judge, Lucknow, who on August 7, 1974 allowed the appeal, set aside the order of allotment made in favour of the first respondent and remanded the case to the Area Rationing Officer (Rent Control) to be decided afresh in accordance with law.

2. The District Judge pointed out that the Area Rationing Officer (Rent Control) had ignored altogether Rule 11 of the Rules framed under the Act which required that in the matter of allotment the principle "first come first served" should be followed. The District Judge overruled a contention raised on behalf of the first respondent that the appellant's application for allotment was not maintainable as he was an unauthorised occupant within the meaning of the Act of the building in question. The appellate authority held that there was no provision in the Act which bars an unauthorised occupant from applying for an allotment. On a writ petition filed by the first respondent, the Allahabad High Court quashed the order of the District Judge and restored the order made by the Area Rationing Officer (Rent Control) allotting the house to the first respondent on the view that Rule 11 requiring "first come first served" principle to be followed was applicable only to persons similarly situated, and an unauthorised occupant could not be "placed in the same situation as others who were in need of accommodation". According to the High Court the principle "first come first served" was "not intended to be applied mechanically and not in such a manner as to frustrate the object of the Act". The correctness of the view taken by the High Court is in challenge before us.

3. It is necessary to refer briefly to the relevant provisions of the Act and the rules framed thereunder. The Act, as its long title shows, is a statute "to provide, in the interest of the general public, for the regulation of letting and rent of, and the eviction of tenants from, certain classes of buildings situated in urban areas, and for matters connected therewith". Chapter III of the Act which

contains provisions regulating letting includes Section 11 to Section 19. Section 11 lays down that no person shall let any building except in pursuance of an allotment order issued under Section 16. Section 12 states inter alia that a landlord or a tenant of a building shall be deemed to have ceased to occupy the building or part thereof if he has allowed it to be occupied by any person who is not a member of his family. The appellant and the tenant of the building who inducted him there are not members of the same family. Section 13 provides that no person shall occupy a building or part thereof which a landlord or tenant has ceased to occupy except under an order of allotment made under Section 16 and that if a person "so purports to occupy" he shall be deemed to be an unauthorised occupant of such building or part. Under Section 16(1)(a) the District Magistrate may make an order requiring the landlord to let any building which is or has fallen vacant or is about to fall vacant or a part of such building to any person specified in the order. An order made by the District Magistrate under this provision is called an allotment order. 'District Magistrate' as defined in Section 3(c) includes an officer authorised by the District Magistrate to exercise all or any of his powers under the Act. An order under Section 16 is appealable under Section 18. Section 41 authorises the State Government to make rules to carry out the purposes of the Act. Rule 10 of the Rules framed under the Act prescribes the procedure for allotment. The District Magistrate is required to maintain a register of applications for allotment of buildings. The applications are to be classified according to the priority categories specified in Rule 11 and they must be registered in the order they are received. The register is prepared afresh for every calendar year and applicants who are unable to secure allotment by the end of an year and whose applications were not rejected as not maintainable are entitled to apply by the 15th of January of the succeeding year for renewal of their applications and they retain their original relative priority. Sub-rule (5) of Rule 10 provides that no building shall ordinarily be allotted to the persons or for the purposes specified in clauses (a), (b) and (c) of the sub-rule. Sub-rule (6) lays down inter alia that a person who is deemed to have ceased to occupy a building within the meaning of Section 12(1)(b) shall not be allotted that or any other residential building for a period of two years from the date of such deemed cessation. Rule 11 which fixes the order of priorities in allotment of residential buildings states in sub-rule (1) that :

In making allotment of a residential building, the following order of priorities shall be observed :

Firstly, for public purposes;

Secondly, for accommodating a person against whom an order has been passed for eviction under Section 21, not being a tenant referred to in Explanation (1) to Section 21(1), or a decree has been passed in a suit filed with the permission of the District Magistrate under Section 3 of the old Act (or such suit or application is pending) and who or members of whose family do not own or hold as tenants any other residential building in the same city, municipality, town area or notified area;

Thirdly, for accommodating others;

and in each of the above categories subject to the provisions of sub-clause (2), the principle "first come, first served" shall be followed.

4. As intending allottees the appellant and the first respondent both come with the third category.

5. If the principle 'first come first served' is to be followed in choosing between them, the appellant's application for allotment being earlier in point of time should have preference unless there is any

valid ground for rejecting his claim. We are not concerned in this appeal about the existence of any such ground; the District Judge and remitted the case to the Area Rationing Officer (Rent Control) for a fresh decision in accordance with law following the 'first come first served' principle. The High Court thought that the appellant being a in unauthorised occupation of the building within the meaning of Section 13 was not entitled to apply for allotment of the premises to him. It does not however appear from the judgment of the High Court that there is any provision in the Act which disentitles such unauthorised occupants from applying for allotment. The appellant is not one of the persons to whom to building is ordinarily to be allotted under sub-rules (5) and (6) of Rule 10. The High Court refers to sub-rules (4) and (5) of Rule 11 to show that the principle 'first come first served' does not apply in all circumstances. Sub-rule (4) gives overriding powers to the District Magistrate to make an allotment out of turn in favour of a person who is occupying any accommodation proposed to be requisitioned under the Uttar Pradesh Temporary Accommodation Requisition Act, 1947 and to who alternative accommodation is required to be provided under that Act. Sub-rule (5) which is expressly made subject to the other sub-rules of Rules 11 states that it should be ensured that no person shall be allotted a building which carries so little rent that he is able to get a residence on payment of rent which is less than ten per cent of his salary or other income, after taking into consideration the house rent allowance allowed by his employer. Both these sub-rules are quite irrelevant for the present purpose. Therefore, assuming that sub-rules (4) and (5) are exceptions to the 'first come first served' principle, the appellant's application for allotment cannot be thrown out unless there was some provision prohibiting unauthorised occupants from applying for allotment. The High Court thinks that an unauthorised occupant cannot be "place in the same situation as others who are in need of accommodation", and that the principle 'first come first served' "has to be applied amongst persons of the same category who are similarly situated". The High Court has not mentioned any provision of the Act to justify the view it has taken, nor any such provisions has been referred to by counsel for the first respondent which disables an unauthorised occupant from applying for an allotment. The disability, the High Court infers from the object of the Act. The object of the Act has to be gathered from its provisions and we have not found anything in the Act which disentitles an unauthorised occupant to ask for an allotment. In our opinion the High Court was in error in quashing the order of the District Judge. The appeal is accordingly allowed. The judgment of the High Court is set aside and that of the District Judge dated August 7, 1974 is restored. There will be no order as to costs.

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