Babu Singh Chauhan

Vs

Smt. Rajkumari Jain and Others

Civil Appeal No. 812 of 1980

(Syed M. Fazal Ali, R. B. Misra JJ)

01.02.1982

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against a judgment dated November 23, 1979 of the Allahabad High Court allowing a writ petition quashing the order of the Rent Control & Eviction Officer and remanding the case to him for considering the question afresh in accordance with law and in the light of the observations made by the High Court.

2. The appeal involves a short and simple point but the case appears to have had rather a long and chequered career. Put briefly, the facts of the case fall within a narrow compass so far as the points for decision are concerned. The last respondent, Smt. Rajkumari Jain, inducted Shri Thapalayal as a tenant in the premises in dispute which are situated in the town of Bijnor. The tenant intimated his intention to the Rent Control & Eviction Officer to vacate the premises on June 25, 1974. On receipt of the aforesaid application of the tenant a Rent Control Inspector was directed to visit the spot and after visiting the same he reported that the premises in question were likely to fall vacant on June 9, 1974. The prescribed authority by its order dated June 1, 1974 allotted the premises to the appellant. In fact, the appellant had applied to the authority on May, 20, 1974 for allotment of the accommodation to him. It appears that these proceedings were taken behind the back of the respondent landlady who was not taken into confidence either by the appellant or by the Rent Control authorities. It was only after the prescribed authority had allotted the premises to the appellant and the respondent-landlady came to know of this fact that she moved the prescribed authority for cancellation of the allotment but her prayer was rejected.

3. Thereafter, the landlady filed an appeal before the Additional District, Judge, Bijnor which was allowed and the allotment in favour of the appellant was cancelled on the ground that the provision of Section 17(2) of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'the Act') were not complied with. Before narrating further sequence of facts, it may be necessary to examine the relevant provisions of the Act. Section 17(2) of the Act may be extracted thus :

> Where a part of a building is in the occupation of the landlord for residential purposes, or is released in his favour under clause (b) of sub-section (1) of Section 16 for residential purpose, the allotment of the remaining part thereof under clause (a) of the said sub-section (i) shall be made in favour of a person nominated by the landlord.....

4. A perusal of this statutory provision would clearly disclose that the object of the Act was that where a tenant inducted by the landlord voluntarily vacates the premises, which are a part of the building occupied by the landlord, an allotment in the vacancy should be made only to a person nominated by the landlord. The dominant purpose to be subserved by the Act is manifestly the question of removing any inconvenience to the landlord by imposing or thrusting on the premises an unpleasant neighbour or a tenant who invades the right of privacy of the landlord. It is obvious that if the tenant has vacated the premises by himself and not at the instance of the landlord, there is no question of the landlord occupying the said premises because he had got a separate remedy for evicting the tenant on the ground of personal necessity. The statute, however, while empowering the prescribed authority to allot the accommodation, safeguards at least the right of the landlord to have a tenant of his choice.

5. In the instant case, the admitted position seems to be that when the prescribed authority allotted the premises to the appellant, the landlady was not taken into confidence nor was she asked to induct either the appellant or somebody else as the tenant of the premises which were likely to fall vacant or which may have fallen vacant. This was undoubtedly an essential requirement of the provisions of Section 17(2) of the At was extracted above. In these circumstances, there could be no doubt that the order of the prescribed authority allotting the premises to the appellant was completely without jurisdiction and against the plain terms of Section 17(2) of the Act. It was in view of this serious legal infirmity that the District Judge allowed the appeal filed by the landlady on January 27, 1976 and cancelled the allotment of the accommodation to the appellant. On February 2, 1976 the landlady herself filed an application before the District Magistrate, Bijnor for delivery of possession of the said premises to her but the District Magistrate rejected the application by his order dated March 8, 1975 on the ground that as the landlady had not applied for release of the accommodation, she could not be allotted the premises straightway. On April 5, 1976 the District Supply Officer, Bijnor directed the counsel for the landlady to nominate a person for allotment of the premises. As against this the landlady applied for release of the accommodation to her in terms of the provisions of Section 16(1) (b) of the Act which runs thus :

> 16. Allotment and release of vacant building - (1) Subject to the provisions of this Act, the District Magistrate may be order -
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> (b) release the whole or any part of such building, or any land appurtenant thereto, in favour of the landlord (to be called a release order).

6. The prayer of the landlady under Section 16(1) (b) also appears to have been ignored by the Rent Control authorities and by an order dated April 15, 1976, the District Supply Officer reallotted the accommodation to the appellant. This led the landlady to file another appeal before the Additional District Judge, Bijnor who by his order dated September 22, 1977 rejected the plea of he landlady, dismissed the appeal and confirmed the order of allotment. The respondent-landlady thereupon filed a writ petition in the High Court and challenged the orders of the District Supply Officer as also of the District Judge who had affirmed that order and confirmed the order of allotment in favour of the appellant. The High Court by the impugned order allowed the writ petition and sent the matter back to the Rent Control & Eviction Officer to consider the question of allotment afresh in view of the observations made by the High Court.

7. The appellant then obtained special leave of this Court against the order of the High Court and

hence this appeal before us.

8. In support of the appeal, Mr. Shanti Bhushan, learned counsel for the appellant submitted that the High Court had no jurisdiction to interfere with the concurrent finding of fact given by the District Supply Officer and the District Judge confirming the allotment in favour of the appellant and that too in a writ jurisdiction. He also submitted that the landlady was not at all in actual physical possession of the premises and has been living outside Bijnor and, therefore, neither the provisions of Section 16(1) (b) nor those of Section 17(2) of the Act would apply to the facts of the present case. On the other hand, the counsel for the respondent submitted that initially the only question before the Rent Control authority was whether the allotment should be made to the appellant even though he was not nominated by the landlady under Section 17(2) of the Act. It is common ground that the appellant was not a nominee of the landlady and, as discussed above, the District Judge in his first order had quashed the allotment on the ground that the provisions of Section 17(2) had not been complied with.

9. It was also argued on behalf of the respondent-landlady that the circumstances having changed, she now wanted to stay in Bijnor permanently and as she wanted additional accommodation she had applied to the District Magistrate under Section 16(1) (b) for releasing the building in her favour. This application was not at all considered on merits by the District Magistrate or by any court for that matter. If the respondent could succeed in convincing the District Magistrate that a case for release of the entire building was made out, then the question of allotting the premises to the appellant would not have arisen at all.

10. We have gone through the judgment of the High Court in the light of the arguments of the parties and we are inclined to agree with the view taken by the High Court that the mere fact that the landlady did not actually reside in the premises which were locked and contained her household effects, it cannot be said that she was not in possession of the premises so as to make Section 17(2) inapplicable. Possession by a landlord of his property may assume various forms. A landlord may be serving outside while retaining his possession over a property or a part of the property by either leaving it in charge of a servant or by putting his household effects or things locked up in the premises. Such an occupation also would be full and complete possession in the eye of law.

11. It was further argued by Mr. Shanti Bhushan that the landlady has absolutely no reason to stay in Bijnor because she was staying with the son in some other town. That by itself is hardly a good ground for the landlady who was a widow to sever her connections with her own property. Moreover, we do not want to make any observations on the merits of this matter as the High Court has rightly remanded the case for a fresh decision on all the points involved.

12. So far as the second point is concerned, viz., the question of allotment of the premises to the appellant, the High Court was fully justified in quashing the order of the District Supply Officer as affirmed by the District Judge because despite several opportunities no attempt had been made to approach the landlady to nominate a tenant. There is no evidence to show that either the prescribed authority or the Rent Control & Eviction Officer ever approached the landlady for making a nomination in respect of the premises vacated by the original tenant and she refused to do so. All that the landlady did was to ask for the release of the premises but even if this was refused it was incumbent on the Rent Control authorities to have fulfilled the essential conditions of Section 17(2) of the At before making any allotment in favour of the appellant or for that matter any other person. It was suggested that as the landlady was not living in the premises which were locked up, Section 17(2) did not apply. We have already rejected this argument because even occupation of a part of a

building by the owner which she may visit off and on is possession in the legal sense of the term and, therefore, it cannot be said that the provision of Section 17(2) would not apply and that the Rent Control authorities would make an allotment in favour of any person without giving an opportunity to the landlady or the landlord to exercise her/his privilege of nominating a tenant.

13. We have already pointed out that the object of the Act seems to be to arm the owner with the power of nomination so as to protect him/her from unpleasant tenants or indecent neighbors who may make the life of the owner a hell. Moreover, the conduct displayed by the appellant in this case clearly shows that if he was thrust on the respondent without her being allowed an opportunity to nominate a tenant, it will violate the very spirit and tenor of Section 17(2) of the Act.

14. As we are of the opinion that the order of the High Court has to be upheld we refrain from making any further observations on the merits or any aspect of the matter which have to be gone into afresh as directed by the High Court.

15. We find no merit in this which is dismissed with costs quantified at Rs. 1000 (rupees one thousand only).

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