

Yogendra Tiwari

Vs

District Judge, Gorakhpur and Others

Civil Appeal No. 2449 of 1978

(A. P. Sen, R. B. Misra JJ)

07.03.1984

JUDGMENT

A. P. SEN, J. -

1. This appeal by special leave is directed against the judgment and order of the Allahabad High Court dated September 13, 1978 setting aside the order of the District Judge, Gorakhpur dated December 15, 1977 and restoring an order of allotment dated September 7, 1977 passed by the Rent Control and Eviction Officer, Gorakhpur under Section 16(1)(a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

2. On the basis of an intimation given to the Rent Control and Eviction Officer, a residential house belonging to the appellant which was in occupation of one Smt. Krishna Devi Asthana was got inspected by the Rent Control Inspector of September 2, 1977 in his absence. On the same day the Rent Control and Eviction Officer used a notice declaring deemed vacancy of the demised premise under Section 12(1)(a) of the Act calling upon persons desirous of getting allotment of the same or of filing objections to file their applications by September 7, 1977. Immediately on the service of the notice on September 6, 1977, the appellant appeared and filed an application before the Rent Control and Eviction Officer praying for 15 days' time for filing his objection as the papers were with his lawyer's clerk. It appears that on the issue of the aforesaid notice, respondent 2 Gunjeshwar Prasad Tiwari who was a member of the State Legislative Assembly, made an application for allotment and the Rent Control and Eviction Officer made an order of allotment under Section 16(1)(a) of the Act on September 7, 1977.

3. The appellant filed a revision before the District Judges under Section 18 of the Act mainly on the ground that no opportunity was afforded to him either to file objections or to make submissions as required under Rule 8(2) framed under the U. P. Act 13 of 1972 and further that no notice as required under Rule 9(3) was ever served on him, nor was he heard in response to the notice. The learned District Judge upheld these objections and accordingly set aside the impugned order of allotment. On a petition by respondent 2 under Article 226 of the Constitution, a learned Single Judge by his judgment has set aside the order of the learned District Judge on the ground that the appellant had been served with a notice by the Rent Control and Eviction Officer and therefore he had knowledge that the question of allotment would be considered by him on September 7, 1977. But despite the notice he did not appear on that day and therefore he could not challenge the validity of the impugned order of allotment for want of notice under Rule 9(3) of the Rules. The learned Single Judge further held that the contention of the appellant that he was denied the opportunity of filing his objections or making submissions under Rule 8(2) could not be sustained since the grant or refusal of adjournment was in the discretion of the Rent Control and Eviction Officer and the

learned District Judge was not justified in interfering with the impugned order of allotment in his revisional jurisdiction. The learned Single Judge observed that if the refusal of adjournment resulted in denial of an opportunity, the appellant has to blame himself.

4. The short question for consideration was whether the Rent Control and Eviction Officer had any authority and jurisdiction to make the impugned order of allotment without affording to the appellant the opportunity of a hearing as enjoined by proviso to Section 16(1) of the Act before making the order, read with rule 8(2) of the Rules and without service of a notice as required under Rule 9(3). The statutory provisions bearing on the question insofar as relevant, are set out below :

12. Deemed vacancy of building in certain cases. - (1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if -

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence elsewhere.

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(4) Any building or part which a landlord or tenant has ceased to occupy within the meaning of sub-section (1), ... shall, for the purposes of this Chapter, be deemed to be vacant.

16. Allotment and release of vacant building - (1) Subject to the provisions of the Act, the District Magistrate may be order -

(a) require the landlord to let any building which is or has fallen vacant or is about to fall vacant, or a part of such building but not appurtenant land along, to any person specified in the order (to be called an allotment order); or

(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) :

Provided that in the case of a vacancy referred to in sub-section (4) of Section 12, the District Magistrate shall give an opportunity to the landlord or the tenant, as the case may be, of showing that the said section is not attracted to this case before making an order under clause (a).

5. Rules 8 and 9(3) are as follows :

8. Ascertainment of vacancy (Sections 12, 16 and 33(8)). - (1) The District Magistrate, shall, before making any order of allotment or release in respect of any building which is alleged to be vacant under Section 12 or to be otherwise vacant or to be likely to fall vacant, get the same inspected.

(2) The inspection of the building, so far as possible shall be made in the presence of

the landlord and the tenant or any other occupant. The facts mentioned in the report should wherever practicable, be elicited from at least two respectable persons in the locality and the conclusion of the inspection report shall be pasted on the notice board of the officer of the District Magistrate for the information of the general public, and an order of allotment may be passed not before the expiration of three days from the date of such posting, and if in the mean time any objection is received, not before the disposal of such objection.

(3) Any objection under sub-rule (2) shall be decided after consideration of any evidence that the objector or any other person concerned may adduce.

9. (3) Immediately after the receipt of intimation of vacancy of any building in the office of the District Magistrate, the vacancy shall be entered in a register which shall be maintained in that behalf and be notified for the information of the general public by pasting a copy of the list of the vacant building on the notice board of that Office, specifying therein the date on which the question of allotment will be considered. He shall also issue a notice to the landlord intimating him the date so fixed. On the date so fixed, the District Magistrate shall consider the cases of all applicants registered in the register mentioned in Rule 10 and shall pass an order under Section 16 in accordance with Rules 10 and 11.

6. It is needless to stress that the making of an order of allotment by the District Magistrate under Section 16(1)(a) of the Act consists of two stages. The first stage is actual vacancy of a building or a part thereof in consequence of an intimation given by the landlord or the tenant under Section 15, or a declaration of deemed vacancy of such building or part thereof under Section 12(4). It is clear from the terms of the proviso to Section 16(1) that in the case of a deemed vacancy under Section 12(4) of the Act, the District Magistrate is required to give an opportunity to the landlord to the tenant, as the case may be, of showing that no declaration of deemed vacancy under Section 12(4) could at all be made in this case before making an order of allotment under Section 16(1)(a). The use of the word 'shall' in the proviso to Section 16(1)(a) makes the requirement mandatory. The District Magistrate therefore cannot make an order of allotment under Section 16(1)(a) on the strength of deemed vacancy under Section 12(4) until the landlord or the tenant, as the case may be, has an opportunity of being heard in the matter. The District Magistrate is required in terms of Rules 8(2) to give an opportunity to the landlord to file his objection or make his submission, if any, to the making of an order of allotment under Section 16(1)(a). In the case of deemed vacancy referred to in Section 12(4), he is entitled to show that none of the clauses (a) to (c) of Section 12(1) comes into play. The second stage is reached when there is a deemed vacancy under section Section 12(4) or actual vacancy in consequence of an intimation under Section 15. Under Rule 9(3) the District Magistrate is required to serve a notice on the landlord intimating the date on which the question of allotment will be considered. The landlord may, in response to the notice issued to him under Rule 9(3), make out a case for release of the building or a part thereof, or any land appurtenant thereto, for occupation by himself or any member of his family, or any person for whose benefit it is held by him either for residential purposes or for purposes of any profession, trade, calling et cetera. The landlord has clearly a right to have an order passed by the District Magistrate under Section 16(1)(a)(b) for the release of the building or a part thereof for any of the purposes set out in Section 16(2). The District Magistrate may release the building or part thereof or any land appurtenant thereto under Section 16(1)(a)(b) where any of the aforesaid conditions are proved to exist to his satisfaction. If the landlord fails to satisfy the District Magistrate on any of these aspects, the District Magistrate would reject his application for release and proceed to make an order of

allotment under Section 16(1)(a). The proviso to Section 16(1) has been introduced to meet with the requirements of principles of natural justice. As vacancy, actual, expected or deemed is a jurisdictional fact for the making of an order of allotment under Section 16(1)(a) or for an order of release under clause (b) thereof, the District Magistrate must follow the procedure prescribed under the Act and the Rules framed thereunder. Even in the absence of these provisions viz. Proviso to Section 16(1) and Rule 8(2) and 9(3) of the Rule framed under Section 41 of the Act, the principle of audi alteram partem would clearly be applicable. The District Magistrate in making an order of allotment under clause (a) or an order of release under clause (b) of Section 16(1) clearly exercises a quasi-judicial function and therefore he has the duty to hear. There must be an impartial objective assessment of all the pros and cons of the case after due hearing of the parties concerned. The impugned order of allotment passed by the Rent Control and Eviction Officer having been made without affording to the appellant an opportunity to have his say in the matter was clearly a nullity.

7. The result therefore is that the appeal is allowed with costs. The judgment and order passed by the High Court is set aside and the order of the District Judge, Gorakhpur setting aside the order of allotment passed by the Rent Control and Eviction Officer under Section 16(1)(a) of the Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 is restored. The case is remitted back to the Rent Control and Eviction Officer for disposal of the application for allotment made by respondent 2 Gunjeshwar Prasad Tiwari according to law. Consequent upon the setting aside of the impugned order of allotment, it would be open to the appellant to apply to the Rent Control and Eviction Officer for being placed in possession of the demised premises forthwith.

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