

Dr. (Smt.) Keshav Devi

Vs

Girdhari Lal Pahwa and Others

Civil Appeal No. 157 of 1985

(Sabyasachi Mukharji, K. N. Singh JJ)

05.11.1986

JUDGMENT

SINGH, J. –

1. This appeal by special leave is directed against the judgment of the High Court of Allahabad (Lucknow Bench) dated January 20, 1984 setting aside order of the Additional District Judge Lucknow dated January 18, 1983 and quashing the allotment order made in appellant's favour and directing the Additional District Magistrate (Civil Supplies), Lucknow to reconsider the applications made for allotment of the premises in dispute after giving notice to the respondent-landlord.

2. The dispute relates to first floor of house No. 109/16 situate in Model House Colony, Aminabad, Lucknow. Mauji Ram Gupta the owner of the house was residing in the ground floor of the house while the first floor was let out to a tenant. Vacancy in the first floor arose, several persons including the appellant, H. C. Ghildiyal and Ramakant Srivastava made applications for allotment of the same. Mauji Ram Gupta, the landlord also made an application for the release of the premises to him under Section 16 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act). The Additional District Magistrate, respondent 4 by his order dated February 25, 1976 rejected Mauji Ram Gupta's application and allotted the premises to H. C. Ghildiyal, but he did not occupy the premises; instead he informed respondent 4 that he did not require the premises. Thereafter respondent 4 allotted the first floor of the house to the appellant by his order dated July 23, 1976 and in pursuance to that order she obtained possession of the premises on July 25, 1976. Mauji Ram Gupta, the landlord challenged the allotment order by means of revision application before the District Judge but the same was rejected. Mauji Ram Gupta entered into an agreement for the sale of the house with G. L. Pahwa, respondent 1 and in part performance of the agreement he permitted G. L. Pahwa to occupy the ground floor of the house in November 1976. G. L. Pahwa made application for allotment and respondent 4 allotted the ground floor to him on December 31, 1976; this appears to have been done with a view to regularise his possession. Mauji Ram Gupta executed a registered sale deed in favour of G. L. Pahwa on July 18, 1977 transferring the entire house including the premises in dispute to him, as a result of which respondent 1 became the owner and the landlord of the premises in dispute. R. K. Srivastava an unsuccessful applicant for the allotment of the premises in dispute had challenged the allotment order dated July 23, 1976 made in appellant's favour under Section 18 of the Act. The District Judge by his order dated August 18, 1977 allowed his revision application set aside the allotment order made in appellant's favour and directed respondent 4 to reconsider the applications made for allotment of the premises in accordance with law. In pursuance of the directions issued by the District Judge respondent 4 considered the applications and by his order dated January 4, 1978 he again allotted the premises to the appellant and rejected the claims of other applicants. Notice of the

allotment proceedings was not given to respondent 1, although by that time he had acquired full rights of a landlord. It appears that respondent had made an application to the State Government for release of the first floor and that had been forwarded by the government to respondent 4, which he disposed of by the same order dated January 4, 1978. Respondent 1 filed a revision application under Section 18 of the Act challenging the allotment order dated January 4, 1978. He filed a review application also before respondent 4 for recall of the order dated January 4, 1978. During the pendency of the review application the revision application made by respondent 1 was dismissed by the District Judge on February 28, 1978 for want of prosecution. However the review application of respondent 1 was allowed by respondent 4 by his order dated December 14, 1981 on the finding that since the premises in dispute was a part of landlord's building which he was occupying, it was mandatory that notice should have been issued to the landlord and since no notice had been issued to him the allotment order was vitiated. On these findings, he recalled his order dated January 4, 1978. The appellant challenged the order by means of a revision application before the District Judge under Section 18 of the Act. The Additional District Judge, Lucknow exercising powers of the District Judge allowed the revision application by his order dated January 18, 1983, and set aside the order of respondent 4 dated January 14, 1981, on the findings that review application was not maintainable and respondent 4 had no jurisdiction to review his order on the ground of absence of notice to respondent 1 who was transferee landlord. Respondent 1 challenged the validity of the order of the Additional District Judge dated January 18, 1983 by means of a writ petition under Article 226 of the Constitution before the High Court. A learned Single Judge of the High Court allowed the writ petition by his order dated January 20, 1984 and quashed the order of the Additional District Judge and directed respondent 4 to consider the application for allotment for (sic by) giving notice to respondent 1. Aggrieved the appellant challenged the validity of the order of the High Court.

3. Before we consider the submissions made on behalf of the appellant it is necessary to briefly notice the findings recorded by the High Court. The High Court held that since the District Judge while setting aside the initial order of allotment made in appellant's favour dated July 23, 1976 directed respondent 4 to consider the allotment applications in accordance with law respondent 4 was under a legal duty to issue notice to respondent 1 who had by that time acquired rights of landlord. Since no notice was given to him the allotment proceeding was rendered illegal. The High Court further held that even though the landlord's application for release of the premises in dispute had been rejected, the transferee landlord had right to nominate a tenant of his choice in accordance with Section 17(2) of the Act. But as no notice was issued to him, he could not exercise his right to nominate a tenant of his choice although the appellant as well as the authority considering the application for allotment both had acquired knowledge that respondent 1 was the transferee landlord occupying a portion of the building. The High Court held that provisions of Section 17(2) were mandatory and its non-compliance rendered the allotment order void. The High Court held that as the order of allotment dated January 4, 1978 was made without giving notice to the landlord, the allotting authority was competent to recall its order in exercise of its inherent jurisdiction. On these findings the High Court set aside the order of the Additional District Judge and directed the allotting authority to reconsider the applications for allotment after giving notice to the landlord respondent 1.

4. Shri Tarkunde learned counsel for the appellant urged that the High Court committed error in setting aside the allotment order and directing the District Magistrate to reconsider the allotment applications at the instance of G. L. Pahwa, respondent 1. He further urged that since Mauji Ram Gupta, the erstwhile landlord's application for release of the premises in dispute had been dismissed and revision against that was also dismissed for non-prosecution, the erstwhile landlord had

exhausted all his rights available to him under the Act. G. L. Pahwa being the successor in interest of Mauji Ram Gupta, did not and could not acquire any further right either to get the premises in dispute released in his favour or to challenge the validity of the allotment order. G. L. Pahwa was not entitled to maintain a review application and Additional District Magistrate had no jurisdiction to recall his order dated January 4, 1978 allotting the premises to the appellant and further he was not entitled to any notice either under Section 17(2) of the Act or under Rule 9(3), as the requisite notice had already been issued to the erstwhile landlord Mauji Ram Gupta who had contested the allotment proceedings. Having given our anxious consideration to these submissions and having regard to the facts and circumstances of the case we do not find any merit in the submissions.

5. When a building or a part of a building falls vacant or is likely to fall vacant, the District Magistrate under Section 16(1)(a) of the Act has jurisdiction to issue allotment order requiring the landlord to let the building or part thereof to the person specified in the order. The landlord may apply to the District Magistrate for release of the whole or any part of such building under Section 16(1)(b) of the Act, if the release application is allowed, the landlord is permitted to occupy the building or part thereof as the case may be. But if release application is dismissed the District Magistrate is empowered to issue allotment order in favour of an applicant, and in pursuance thereof the allottee is entitled to take possession. Before applications for allotment are considered by the District Magistrate it is mandatory for him to serve notice of the vacancy on the landlord informing him the date on which the allotment is to be considered as prescribed by Rule 9 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (hereinafter referred to as the Rules). Rule 9(3) requires service of notice and intimation of the date fixed for considering the allotment of the premises which may have fallen vacant or is likely to fall vacant. This is mandatory as has been held by this Court in *Yoginder Tiwari v. District Judge* ((1984) 2 SCC 728) and in catena of cases the High Court of Allahabad, has taken the same view, it is not necessary to burden the judgment by referring to all those decisions. The object and purpose of the notice to the landlord regarding the date fixed for allotment proceedings is to enable him to file his objections if any, to the allotment proceedings or to make application for release of the premises as contemplated by Section 16(1)(a) of the Act or to nominate a tenant of his choice if he himself is in occupation of a portion of the building. An allotment order made without giving notice to the landlord as required by Rule 9(3) would be rendered illegal. We therefore agree with the view taken by the High Court.

6. At the initial stage of allotment proceedings for the year 1976, Mauji Ram Gupta, the erstwhile landlord had made application for release of the accommodation and the first floor of the house, but that application was rejected and thereupon the District Magistrate allotted the premises to H. C. Ghildiyal by his order dated July 23, 1976. Mauji Ram Gupta's revision application against the order rejecting his release application was rejected by the District Judge on August 5, 1976. Meanwhile the District Magistrate allotted the premises to the appellant by his order dated July 23, 1976. On the dismissal of the revision application of Mauji Ram Gupta, his claim for release of the premises in dispute stood rejected finally. As noted earlier Mauji Ram Gupta sold the entire house in dispute to G. L. Pahwa on July 18, 1977 and the allotment order in appellant's favour was set aside by the Additional District Judge on August 8, 1977 at the instance of R. K. Srivastava an unsuccessful applicant for the allotment of the premises in dispute. It is noteworthy that the appellant took no proceedings to challenge the order of Additional District Judge dated August 8, 1977 under which the allotment order was set aside and the District Magistrate was directed to reconsider the allotment applications in accordance with law. In such a situation G. L. Pahwa who had admittedly become the landlord of the premises in dispute was entitled to exercise rights of the landlord available to him under the Act.

7. Section 17(2) lays down that where a part of a building is in occupation of landlord for a residential purpose, the allotment of any other part thereof under Section 16(1)(a) shall be made in favour of a person nominated by the landlord. This provision safeguards interest of the landlord to have a tenant of his choice if he is occupying a portion of the building. The legislature enacted Section 17(2) with a view to ensure peaceful living to a landlord and for that purpose it permitted the landlord to have a tenant of his choice. The landlord's valuable right cannot be taken away by the District Magistrate while exercising his powers of allotment under Section 16(1)(a) of the Act. The scope and purpose of Section 17(2) of the Act was considered by this Court in *Babu Singh Chauhan v. Rajkumari Jain* ((1982) 3 SCR 114 : (1982) 1 SCC 520 : AIR 1982 SC 810) and the court observed : (SCC pp. 522-23, para 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 has 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.

8. In the instant case there is no dispute that when the allotment proceedings were taken in pursuance of the District Judge's order dated August 8, 1977 and when the allotment was made in appellant's favour on January 4, 1978 no notice of the allotment proceedings was issued to G. L. Pahwa, respondent 1, although the appellant as well as the Additional District Magistrate both knew that G. L. Pahwa had stepped in the shoes of landlord and that he was occupying ground floor of the building. The allotment order was made in appellant's favour on January 4, 1978, but the landlord, though residing in a part of the building was denied opportunity of nominating a tenant of his choice as contemplate by Section 17(2) of the Act. In these circumstances there can be no doubt that the order of the Additional District Magistrate allotting the premises to the appellant was completely without jurisdiction and against the plain terms of Section 17(2) of the Act.

9. The submission of Shri Tarkunde that on dismissal of the revision application of Mauji Ram Gupta the erstwhile landlord, all rights of the landlord stood exhausted and G. L. Pahwa being the transferee landlord could not exercise any further right of landlord in the matter relating to allotment of the premises in dispute are untenable. Mauji Ram Gupta's application for release of the premises was dismissed and a revision application filed by him against the order of the Additional District Magistrate refusing to release premises in dispute stood rejected, but if the conditions set out in Section 16(1)(b) existed we see no reason as to why the transferee landlord could not press his case for release but we do not think it necessary to consider this question in detail or to express any opinion on this question as admittedly the transferee landlord respondent 1 made no application for release of the premises in dispute to the District Magistrate or to the prescribed authority and his application made to the State Government for release of the accommodation which was forwarded to the District Magistrate was rejected and the High Court has upheld that order and no challenge has been made by G. L. Pahwa to that order. Assuming that the transferee landlord's right to get the premises in dispute released stood exhausted, G. L. Pahwa being the landlord had every right to nominate a tenant of his choice in accordance with Section 17(2) of the Act. Admittedly no notice

had been issued to G. L. Pahwa affording any opportunity of nominating a tenant of his choice before the order of allotment dated January 4, 1978 was made. The landlord has right to apply for release of the premises on the falling of a vacancy failing which he has another right under Section 17(2) to nominate a tenant of his choice if he is occupying a portion of the building. It is the duty of the authority considering the allotment under Section 16(1)(a) of the Act, to afford opportunity to the landlord to nominate tenant of his choice and if the landlord nominates a person of his choice the authority is bound to allot the premises in favour of the nominee of the landlord. Mauji Ram Gupta was not given that opportunity; there was thus no question of his having exhausted his right to nominate a tenant of his choice.

10. Learned counsel for the appellant urged that the Additional District Magistrate had no power to allow the review application made by G. L. Pahwa or to recall his order dated January 4, 1978 allotting the premises in dispute to the appellant. Section 16(5) provides for review of an order of allotment at the instance of a landlord on an application made within 7 days. In the instant case the Additional District Magistrate by his order dated December 14, 1981 recalled his order dated January 4, 1978 allotting the premises in dispute to the appellant on the ground that no notice of the proceeding had been served on the landlord, respondent 1 and that there was enough evidence on record to show that the premises in dispute was a part of the landlord's accommodation, yet he was not given opportunity to nominate a tenant of his choice. The Additional District Magistrate therefore recalled the order on the ground that the allotment order had been issued in violation of the mandatory provision of Section 17(2) of the Act. No exception can be taken to the correctness of the merit of the order of the Additional District Magistrate. As discussed above we have already expressed our opinion that the allotment order dated January 4, 1978 issued in appellant's favour was rendered illegal for the non-compliance of the mandatory provision of Section 17(2) of the Act. In that view even if there was any procedural defect in entertaining the review application, it would not be proper and desirable to interfere with the order of the Additional District Magistrate, more so, when the High Court has already upheld that order.

11. In view of the above discussion we are of the opinion that the High Court's order does not suffer from any error of law and the appellant is not entitled to any relief. We accordingly dismiss the appeal with costs.

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