

# ALLAHABAD HIGH COURT

Lachhman Das

Vs.

Rent Control

Civil Misc. Writ No. 304 of 192

(Agarwala and Chaturvedi, JJ.)

13.01.1953

## JUDGMENT

### **Agarwala, J.**

1. This is an application praying that the order of allotment of a shop situate in Mohalla Shahamatganj in the city of Bareilly, made by the Rent Control and Eviction Officer on 12-9-1951, in favor of Krishna Kumar, opposite party 2, be quashed. The facts briefly stated are as follows : The shop in dispute is a tin shed with wooden structures. It is on a plot of land which along with three other shops and a godown is owned by several persons. Two of these co-sharers, viz., Naqshe Ali and Mashooq Ali were admittedly occupying the disputed shop and were carrying on Kirana business. It appears that they suspended their business sometime in July or August 1951. Several persons came forward to get an allotment of the shop in the expectation that Naqshe Ali and Mashooq Ali would vacate it. The first person to come forward was one Kalloomal. He made an application for allotment with the concurrence of Naqshe Ali and Mashooq Ali on 4-8-1951. On 21-8-1951, Lachman Das applicant applied for its allotment. On 24-8-1951 Lachman Das made a second application for allotment. On 27-8-1951 Krishna Kumar made a similar application. This application was made with the consent of Naqshe Ali and Mashooq Ali.

2. On 28-8-1951, however, Lachman Das secured a sale deed of the materials of the shop and the goods stored therein in his favor as also of the rights of Naqshe Ali and Mashooq Ali in the rest of the property which was 2½ anna share. On the same date he made an application for allotment of the shop in his favor with the consent of Naqshe Ali and Mashooq Ali.

3. On 12-9-1951 the Rent Control and Eviction Officer made an order allotting the shop to Krishna Kumar opposite party. Against this order, the applicant filed a suit for the issue of an injunction restraining Krishna Kumar, from taking, and T.R.O. from giving, possession over the

shop. He also made an application for a temporary injunction. His prayer was granted by the trial Court, but in appeal the temporary injunction was cancelled on the ground that the suit itself was not maintainable because no notice, as required by S.80, C.P.C., had been given to the Rent Control and Eviction Officer. The applicant thereafter withdrew the suit and filed the present application under Article 226 of the Constitution.

4. In the affidavit which the applicant has filed in support of his application, it is mentioned that the shop in dispute was constructed by Naqshe Ali and Mashooq Ali who were co-sharers in the other shops, godown and the site of the building and in the land attached to those shops to the extent of 2½ anna share. In the counter-affidavit filed by Krishna Kumar it is alleged that Naqshe Ali and Mashooq Ali were merely tenants of the shop in dispute paying a rent of Rs. 60/-. It, however, appears that Krishna Kumar himself had mentioned in his application for allotment that the shop was owned by Naqshe Ali and Mashooq Ali and had not mentioned that any rent was paid by Naqshe Ali and Mashooq Ali. The Rent Control and Eviction Officer also in his order of allotment mentioned that Naqshe Ali and Mashooq Ali were the owners of the shop. It is true that the applicant in his application for allotment mentioned Rs. 60/- as the present rent of the shop. But he explains that he did not mean thereby that the rent was paid by Naqshe Ali and Mashooq Ali, but that the estimated rent of the shop was Rs. 60/-. Having regard to what was stated by the opposite party in his application for allotment, and by the Rent Control and Eviction Officer in his order of allotment, we hold for the purposes of the present application that Naqshe Ali and Mashooq Ali were not tenants of the shop but were owners thereof.

5. The question then is whether Naqshe Ali and Mashooq Ali having suspended their business, but not having vacated the shop because their goods were still in the shop, had the power to transfer possession over the shop to the applicant without the shop being allotted to him by the Rent Control and Eviction Officer. We think that they had the power and the jurisdiction of the Rent Control and Eviction Officer did not come in.

6. Under Section 7, Rent Control and Eviction Act, the District Magistrate is authorized to require a landlord to give intimation that any accommodation of which he is a landlord is or has fallen vacant and to let or not to let such accommodation to any person. The tenant is also bound to inform the Rent Control and Eviction Officer of his intention to vacate the premises he is occupying. It is only when an accommodation falls vacant (and now after the amendment of Section 7 by Act 24 of 1952, or is about to fall vacant) that the District Magistrate acquires the jurisdiction to make an order of allotment. When an owner of property, being in possession of it and actually occupying it, transfers the ownership and the possession thereof to a transferee, the ownership and possession vest in the transferee from the moment of transfer and the transferee steps into the shoes of the owner. In such a case, in our opinion, the accommodation cannot be said to have fallen vacant. What is contemplated by 'accommodation falling vacant' under Section 7 in the case of the landlord himself in occupation is that the accommodation is not intended to be used by the owner for his own purposes, but is intended to be let out to a tenant, or if the occupier is a tenant that the tenant will cease to occupy it. Where a person purchases the

rights of ownership and gets into possession of the accommodation from the previous owner, who was in fact occupying the accommodation for his own purposes, it cannot be said that at any point of time the accommodation had fallen vacant. In the present case it appears that before the accommodation actually fell vacant, the accommodation was transferred to the applicant. In the circumstances the Rent Control and Eviction Officer, in our opinion, had no jurisdiction to make the allotment.

7. It was urged that since the applicant availed of another remedy and failed therein, he ought not to be allowed to avail himself of the remedy under Article 226 of the Constitution. We have already mentioned that the suit filed by the applicant was withdrawn by him because his application for temporary injunction was rejected on the ground of the suit not being maintainable. This is not a case in which the application has failed on the merits in the previous suit. We do not think that his failure to obtain redress in the suit is a bar, in the circumstances of the present case, to his seeking a relief from this Court under Article 226. On the other hand, the decision made on the application for the issue of a temporary injunction leads to the inference that he had no other remedy except the one which he is now pursuing.

8. It was next urged that the applicant had himself made an application for the allotment of the shop to him and, therefore, he had submitted to the jurisdiction of the Rent Control and Eviction Officer and could not now seek to have the order of the said Officer set aside by this Court. The applicant, no doubt, made an application for allotment to the Rent Control and Eviction Officer, but if it turns out that the Rent Control and Eviction Officer had no jurisdiction to make the order of allotment, the consent of the applicant would not confer jurisdiction on the Rent Control and Eviction Officer. It appears to us that the applicant was ignorant of his rights when he made the application for allotment. If he acted in ignorance of his rights there could be no question of estoppel operating against him.

9. In the result we allow this application and quash the order of allotment. The applicant will have his costs from Krishna Kumar opposite party.

Application allowed.