

ALLAHABAD HIGH COURT

Haji Maula Bux

Vs.

Rent Control and Eviction Officer

Sp. A. No. 243 of 1957.

(Mootham, C.J. and Srivastava , J.)

05.11.1957

JUDGMENT

Mootham, C.J.

1. This is an appeal from an order of Mr. justice Jagdish Sahai dated 30-10-1957, dismissing a petition u/ Article 226 of the Constitution.

2. The Appellant is the owner of certain premises in Kanpur which were in the occupation of a tenant. On 22 5-1957, the tenant was ejected through the proceedings in the civil court, and the Appellant thereupon applied to the Rent Control and Eviction Officer for the release of the premises in his own favor. The Rent Control and Eviction Officer, however, by an allotment order dated 15-7-1957, allotted the premises to the third Respondent. By that time the Appellant had entered into the possession of the premises, and an order was subsequently made Under Section 7A of the Act requiring him to vacate them. The Appellant sought to have this order revised by the Commissioner on the ground that the order of allotment had been wrongly made inasmuch as the Rent Control and Eviction Officer had failed to consider the Appellant's own need for the premises for his personal occupation. That application in revision was dismissed by the Comr. by an order dated 12-10-1957. The Appellant then filed a petition in this Court u/Art. 226 of the Constitution in which he prayed that the allotment order and the order of the Commissioner be quashed by writ of certiorari on the ground that the Rent Control and Eviction Officer had not complied with the provisions of R. 6 of the Rules framed under the Act. The petition was dismissed by Mr. Justice Jagdish Sahai by the order which is the subject of the present appeal. The learned Judge took the view that when making the allotment order, the Rent Control and Eviction Officer had in fact fully considered the needs of the Appellant.

3. It appears that on 15-7-1954, the Rent Control and Eviction Officer made two orders. By the first of these he rejected the Appellant's application for the release of the premises in his own

favor, and by the second he directed that the premises be allotted to the third Respondent. No copy of the order made by the Rent Control and Eviction Officer rejecting the Appellant's application is before us, but it appears from paragraph 6 of the affidavit accompanying the petition that the Appellant had stated that he needed the premises for karkhana purposes, but that as the premises in question were on the first floor of the building the Rent Control and Eviction Officer did not accept the Appellant's statement as correct and was not satisfied that the Appellant genuinely needed the premises. The same view was taken by the Additional Commissioner in his order of 12-10-1957. In the course of his order the Additional Commissioner says:

"The Learned Counsel for the opposite(sic) party replies that this is a very small accommodation about half a mile away from the residence and the workshop of the applicant, and is not suitable for the needs of his business. It is also pointed out that the landlord did not disclose this need in his application for release, but mentioned it only in the course of the enquiry. Considering all these facts, I do not see sufficient reason to differ from the finding of the Rent Control and Eviction Officer that the need of the landlord is not genuine."

4. There can therefore, we think, be no doubt that the Rent Control and Eviction Officer did consider the Appellant's need and that he came to the conclusion that it was not genuine. Learned Counsel for the Appellant asks us to go behind the finding of the Rent Control and Eviction Officer and come to the conclusion that on the materials before him, the Rent Control and Eviction Officer ought to have held that the Appellant's need was genuine. We are of opinion that there are no circumstances which would justify us in reviewing the Rent Control and Eviction Officer's finding of fact.

5. Learned Counsel for the Appellant also contends that the Rent Control and Eviction officer misdirected himself with regard to the construction to be placed on R. 6, and he has invited our attention on a passage of the judgment in the case of *Gada Dhar Prasad Sharma v. The District Magistrate Lucknow*¹, in which the learned Judge said:

"The landlord is u/R. 6 entitled to preference and unless the Rent Control and Eviction Officer thinks that his need is not genuine in the sense that he does not want to live in the house but wants to take it for somebody else it is incumbent on the Rent Control and Eviction Officer to allot the house to the landlord."

With great respect we are unable to subscribe to the view that except in the case in which the landlord wants the accommodation for the purpose of letting it out to another person, the Rent Control and Eviction Officer is bound to conclude that the need of the landlord is genuine. The essential requirements of R. 6 are (i) that the landlord must need the accommodation for his own occupation and (ii) that his need must be bona fide. If the landlord requires the premises in order

to let them to another party he obviously is not requiring them for his own occupation and is not therefore entitled to the benefit of the rule. There may however be many other grounds to justify the conclusion either that the need of the landlord is not genuine or that he does not require the accommodation for his own occupation. Each case must necessarily depend on its own facts. "Letting out to another person" cannot therefore be employed, in our opinion, as the sole test for deciding whether the landlord is to be

¹1956 AWR HC 753 : 1956 A.I.J.R. 694 at 695

allowed the benefit of the rule. In the case before us the Additional Commissioner had, on the material before him, arrived at a finding of fact that the Appellant's need was not genuine. The learned single Judge was in our opinion justified in taking the view that the finding could not be allowed to be challenged in writ proceedings.

6. The appeal therefore fails and is dismissed.

Appeal dismissed.