

PETITIONER:
TIRLOK SINGH & CO.

Vs.

RESPONDENT:
DISTRICT MAGISTRATE, LUCKNOW & ORS.

DATE OF JUDGMENT 29/03/1976

BENCH:
CHANDRACHUD, Y.V.
BENCH:
CHANDRACHUD, Y.V.
KRISHNAIYER, V.R.

CITATION:
1976 AIR 1988 1976 SCR (3) 942
1976 SCC (3) 726
CITATOR INFO :
RF 1985 SC1635 (1,6,9,10)

ACT:

Right to be heard-Lawful occupant of a building has no right to be heard at the stage of "notifying the vacancy" by the District Magistrate before passing an order of allotment or release-U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 13, 1972, S. 16 read with Rule 8 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules 1972-Scope of.

HEADNOTE:

Under section 12 of the U.P. Rent Act both the landlord and the tenant are required to intimate a vacancy to the District Magistrate, as and when a vacancy is deemed to have occurred in the circumstances specified therein. On the intimation of a vacancy, the District Magistrate may under section 16 pass either an order allotting the premises to a person specified by him or he can release the vacancy in favour of the landlord on being satisfied that he requires the premises for the purposes mentioned in section 16(2). Such an order can however be passed only after "ascertainment of vacancy" under Rule 8 of U.P. Rent Rules 1972, through the Rent Inspector and after "notifying the vacancy" by display on the notice board of the District Magistrate for a period of three days from the date of such notification.

For the purposes of disposal of an application made by respondents 2 and 3 u/s 16(1) (b) of the Act for the "release" of certain residential premises of which the appellants claim to be their tenants, the District Magistrate passed an order on May 20th 1974 viz. "Let the vacancy be notified" admittedly without granting any hearing to the appellants, which the appellants challenged as violative of the principle of "Audi Alteram Partem" in the Allahabad High Court. The High Court, though it granted an interim stay, after show cause notice rejected the Writ Petition summarily with a brief speaking order on the ground that the petition was premature and that the proper remedy lay to them u/s 16(5) (a) of the Act for review of the order directing that the vacancy be notified. Aggrieved by the said order the appellants filed a petition for special leave

in this Court. During its pendency, the respondent No. 1 issued a notice to the appellants that the release application filed by respondents 2 and 3 would be taken up for hearing on May 19th 1975 and on May 20th 1975 passed an order of release, after refusing to stay further proceedings. On May 30th 1975, the appellants filed an appeal against the release order to the District Judge Lucknow, who has stayed further proceedings and the appeal is pending. The question is whether the order dated May 20th 1974 was illegal for the reason that it was passed without affording a hearing to the appellants.

Dismissing the appeals the Court,

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HELD : (1) A Study of the scheme of the Act and its provisions show the untenability of the contention as regards the illegality of the order passed by respondent No. 1. [945A]

(ii) The Act does not provide for a hearing at the stage when the District Magistrate passes an order of allotment or release. [945-C]

(iii) An order passed under rule 8(2) of the U.P. Rent Rules for "ascertainment of vacancy" is what is meant by "notifying the vacancy". The District Magistrate need not hear the parties before notifying the vacancy because under the scheme of the U.P. Rent Act an order notifying the vacancy does no injury and causes no prejudice to the interests of any party. A notification of the vacancy is a step-in-aid of an order of allotment or release and it is only when such an order of allotment or release is passed that the landlord or the tenant as the case may be have a grievance. Orders of allotment and release are in the first instance reviewable u/s 16(5)(a) by the District
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Magistrate himself and an order passed u/s 16 is appealable u/s 18. The Act thus contemplates successive opportunities being afforded to persons whose interests are likely to be affected by an order passed by the District Magistrate. [945F-G, 946A, C]

(iv) In the instant case, the Writ Petition was premature in the sense that the order impugned thereby did not affect the appellants' interest in the particular premises. The appellants have since filed an appeal against the order of release to the District Judge and that appeal is pending. That is the proper forum for adjudicating on the rival claims. [946E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1093 of 1975.

Appeal by Special Leave from the Judgment and order dated 7th August 1974 of the Allahabad High Court (Lucknow Bench) in Writ Petition No. 673/74.

S. C. Malik, S. K. Mehta, K. R. Nagaraja and P. N. Puri for the Appellant.

S. T. Desai and M. L. Verma for Respondents 2 and 3.

The Judgment of the Court was delivered by

CHANDRACHUD, J. This appeal by special leave raises a short, though important question under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 13 of 1972.

Respondents 2 and 3 filed an application under section 16(1)(b) of the Act for the 'release' of certain residential premises of which the appellants claim to be their tenants.

Respondent 1, acting as a Rent Controller, directed a Senior Inspector to inspect the premises and make a report. Accordingly, the Senior Inspector inspected the premises and submitted a report on April 9, 1974 stating : "After hearing the parties it would be proper to take further action". The Senior Inspector seems to have found that the premises were in occupation of 3 persons two of whom claimed to be partners of the appellant-firm M/s. Tirlok Singh & Co. On receipt of the report respondent 1 passed the impugned order, "Let the vacancy be notified", admittedly without granting any bearing to the appellants.

On May 23, 1974 the appellants filed a writ petition in the High Court of Allahabad challenging the aforesaid order on the ground that it was passed in violation of the principles of natural justice. Pending admission of the writ petition the High Court stayed further proceedings consequent on the order. On August 7, 1974, a Division Bench of the High Court rejected the writ petition summarily, with a brief speaking order. It felt that the writ petition was premature and that the proper remedy for the appellants was to approach respondent 1 under section 16(5)(a) of the Act for review of the order directing that the vacancy be notified.

In April, 1975 the appellants filed a petition for special leave in this Court against the order of the High Court but during the pendency of that petition, respondent 1 issued a notice to the appellants stating that the release application filed by respondents 2 and 3 would be taken up for hearing on May 19. On May 21, 1975 respondent 1 passed a release

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order and, though moved in that behalf by the appellants, refused to stay further proceedings. On May 30, 1975 the appellants filed an appeal against the release order to the District Judge, Lucknow who has stayed further proceedings. That appeal is pending.

The narrow question for determination is whether the order passed by respondent 1 on May 20, 1974 directing that the vacancy be notified is illegal for the reason that it was passed without affording a hearing to the appellants. This question incidentally involves an inquiry into the correctness of the view expressed by the High Court that the writ petition filed by the appellants was premature.

It is necessary for a proper appreciation of the controversy involved in this appeal to understand the scheme of the U.P. Rent Act, 13 of 1972. Chapter III entitled "Regulation of Letting" provides by section 12(1) that 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. By section 12(4), any building or part of a building which a landlord or a tenant has ceased to occupy shall be deemed to be vacant. By section 13, where a landlord or a tenant ceases to occupy a building no person can occupy it otherwise than under an order of allotment or release passed under section 16. Section 15 imposes an obligation on every landlord to give notice of the vacancy to the District Magistrate whenever a building falls vacant.

Section 16 which deals with allotment and release of vacant buildings provides by sub-section (1)(a) that the District Magistrate may by order require the landlord to let

any vacant building to any person specified in the order, to be called an allotment order. Section 16(1) (b) empowers the District Magistrate to pass a release order directing that the whole or any part of such building may be released in favour of the landlord. By reason of section 16(2), no release order can be passed under section 16(1)(b) unless the District Magistrate is satisfied that the building is required by the landlord bona fide for occupation by himself or any member of his family or for any of the purposes specified in the sub-section. By section 16(5)(a), where the landlord or any other person claiming to be a lawful occupant of the building comprised in the order of allotment or release satisfies the District Magistrate that such an order was not made in accordance with clause (a) or clause (b) of section 16(1), the District Magistrate may review the order. If the District Magistrate on review sets aside or modifies the order of allotment or release, he is empowered under section 16(5)(b) to put the applicant, if already evicted, back into possession. Section 18 which provides for an appeal against an order of allotment or release says that any person aggrieved by an order of allotment or release passed under section 16 may prefer an appeal to the District Judge. If the order of allotment or release is varied or rescinded by the District Judge, the District Magistrate under section 18(2) has the power to place the

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parties back in the position which they would have occupied but for such order.

A study of these provisions shows the untenability of the appellant's contention as regards the illegality of the order passed by respondent. 1. Chapter III of the U.P. Rent Act casts an obligation both on the landlord and the tenant to intimate a vacancy to the District Magistrate. A vacancy is to be deemed to have occurred in the circumstances specified in section 12. On the intimation of a vacancy or otherwise, the District Magistrate may under section 16 pass either an order allotting the premises to a person specified by him or he can release the vacancy in favour of the landlord on being satisfied that he requires the premises for the purposes mentioned in section 16(2). The Act does not provide for a hearing at the stage when the District Magistrate passes an order of allotment or release. But any person aggrieved by such an order is entitled under section 16(5)(a) to ask the District Magistrate to review his order. If, in the meanwhile, any person in possession of the premises has been evicted the District Magistrate has the power, if he sets aside or modifies the order of allotment or release, to put the applicant back in possession. Further, an order passed under section 16 is appealable under section 18 which means that a person aggrieved by an order of allotment or release has at least a two-fold opportunity to challenge an order affecting his interest.

The order dated May 20, 1974 passed by respondent 1 to the effect "Let the vacancy be notified" is not by itself and without more calculated to injure or effect the appellant's interest. As a sequel to that order and after the High Court rejected the appellants' writ petition, respondent 1 served a notice on the appellants stating that the proceeding would be taken up for hearing on May 19, 1975. The release order was eventually passed on May 21 after hearing the appellants and they have filed an appeal against that order before the District Judge who is entitled to examine the legality and propriety of the order.

Thus, in the first place, it was unnecessary for respondent 1 to hear the appellants before notifying the

vacancy because under the scheme of the U.P. Rent Act, an order notifying the vacancy does no injury and causes no prejudice to the interests of any party. A notification of the vacancy is a step-in-aid of an order of allotment or release and it is only when such an order of allotment or release is passed that the landlord or the tenant, as the case may be, can have a grievance. Orders of allotment and release are, in the first instance, reviewable by the District Magistrate himself and an order passed by the District Magistrate under section 16 is appealable under section 18.

A reference to the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 would be relevant and useful in this behalf. Rule 8(1) called "Ascertainment of Vacancy" enjoins the District Magistrate, before making an order of allotment or release in respect of any building which is alleged to be vacant, to obtain a report from the Rent Control Inspector. Under rule 8(2), the Inspector is required to inspect the building as far as possible in the presence

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of the parties and submit the report to the District Magistrate after eliciting the necessary facts. Rule 8(2) requires that the conclusion contained in the Inspector's report must be posted on the Notice Board of the District Magistrate's office for the information of the general public. This is what is meant by "notifying the vacancy" and this explains the order passed by the District Magistrate : "Let the vacancy be notified". The existence of the vacancy, by being displayed on the District Magistrate's notice board, is notified to the general public in order that persons interested in the allotment of the vacancy may apply to the District Magistrate in that behalf. Under Rule 8(2), an order of allotment can be passed not before the expiration of 3 days from the date on which the vacancy is notified and if in the meantime any objection is received, not before the disposal of such objection. Under rule 8(3), all objection to the notification of the vacancy has to be decided after considering any evidence that the objector or any other person may adduce.

The Act thus contemplates successive opportunities being afforded to persons whose interests are likely to be affected by any order passed by the District Magistrate. Putting it briefly, an order notifying the vacancy can be objected to and the objection has to be decided after considering the evidence that the objector or any other person concerned may adduce. Secondly, if an order of allotment or release is passed under section 16, following upon the notification of a vacancy, the aggrieved person can file a review application. Thirdly, as against an order passed under section 16, there is a right of appeal under section 18.

The High Court was therefore right in expressing the view that the appellants' writ petition was premature. The writ petition was premature in the sense that the order impugned thereby did not affect the appellants' interest in the particular premises. The appellants have since filed an appeal against the order of release to the District Judge and that appeal is pending. That is the proper forum for adjudicating on the rival claims of the appellants on one hand and respondents 2 and 3 on the other.

The appeal is accordingly dismissed with costs.

S.R.

Appeal dismissed.

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JUDIS