

PETITIONER:  
R. K. PARASHER

Vs.

RESPONDENT:  
DINESH KUMAR & ORS.

DATE OF JUDGMENT: 23/03/2000

BENCH:  
S.N.Phukan, S.S.Mohammed Quadri

JUDGMENT:

SYED SHAH MOHAMMED QUADRI, J.

These appeals arise from the common judgment of the High Court of judicature at Allahabad in Civil Miscellaneous Writ Petition Nos.3951 & 7273 of 1982 passed on October 16, 1997. The petitioner in the first-mentioned writ petition is the son of the petitioner in the second-mentioned writ petition. In the writ petitions they impugned the order of allotment of Shop No.123-A, Madar Gate, Aligarh, (hereinafter referred to as the shop) in favour of the appellant, made by the Rent Control and Eviction Officer, Aligarh (Respondent No.3) on November 19, 1981 and confirmed by the IInd Additional District Judge, Aligarh (Respondent No.2) by his order dated April 1, 1982. The High Court allowed the writ petitions and quashed the said orders of respondent Nos. 2 and 3. The facts giving rise to these appeals are briefly set out here. One Bishan Sarup Gupta was the owner of the shop which was in the occupation of the tenant-Gulab Chand Jain. Dinesh Kumar (respondent No.1) with the connivance of the then tenant filed an application for permission to carry on business in partnership in the shop under Rule 10 (6) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (for short the Rules) with a view to induct respondent No.1 as a tenant. But that application was dismissed by the District Supply Officer on November 9, 1976. The second attempt was made by respondent No.1 by filing an application under Section 14 of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short the Act) for regularisation of his tenancy, alleging that he occupied the shop on June 1, 1976. The District Supply Officer dismissed that petition holding, inter alia, possession of Dinesh Kumar cannot be regularised under Section 14 of the Act. In the eye of law the disputed shop is vacant. It is, therefore, declared to be vacant and declaration of vacancy be carried out. For consideration of the application for allotment of the shop the case was posted on September 14, 1978. By that date there were four applicants - the appellant herein, respondent No.1, his father Chandra Pal and one Gopal Krishan Sharma for allotment of the shop. After considering the respective merits of the applicants, the third respondent allotted the shop in favour of the appellant by order dated November 19, 1981. The correctness of that order was questioned by respondent No.1 and Chandra Pal as well as the heirs of the

said landlord by filing the revision petitions before the second respondent under Section 18 of the Act. The second respondent upheld the order of allotment of the shop in favour of the appellant holding inter-alia that under Rule 11 of the Rules his application being the first in time had priority and dismissed the revision petitions on April 1, 1982. That order was questioned in the aforesaid writ petitions by respondent No.1 and Chandra Pal before the High Court. By the impugned common order the High Court allowed the writ petitions and set aside the allotment made in favour of the appellant. Mr. R.C. Verma, the learned counsel appearing for the appellant, submitted that efforts of respondent No.1 to regularise his back entry into the shop after unauthorisedly occupying the same were turned down by the competent authority - first by rejecting joint application to permit him to carry on business as a partner of the firm and on the second occasion by dismissing his application to regularise the tenancy under Section 14 of the Act, therefore, allotment of the shop to him will nullify the earlier orders. He submitted that in the order of allotment comparative merits of each of the applicants were considered so he can not complain of non-consideration of his application or that of his father-Chandra Pal. He conceded that Rule 11 had no application but contended that under Rule 10(5)(d) of the Rules respondent No.1 was ineligible and that the appellant is entitled to priority in allotment of the shop under Rule 10(8)(b) of the Rules. Shri Dhruv Agrawal, the learned counsel appearing for the respondents, submitted that the third respondent negatived the claim of respondent No.1 for the reason that he was an unauthorised occupant and that the revisional authority (the second respondent) erroneously upheld the allotment in favour of the appellant under Rule 11 of the Rules, so the High Court had rightly quashed the same and ordered de novo consideration. The short point that arises for consideration is : whether the impugned order of the High Court warrants interference. A perusal of the order of allotment, made by the third respondent in favour of the appellant, shows that the application of Chandra Pal was considered and rejected on the ground that he failed to produce any evidence and that he could not prove his need for allotment of the shop. It was also pointed out that he being the father of respondent No.1 moved a separate application simply for continuance of the occupation of the shop by Dinesh Kumar. There is nothing in the order of the revisional authority to show that the need of Chandra Pal has been proved, therefore, his claim for allotment of the shop can not be countenanced. The High Court is, therefore, not justified in directing that his case for allotment of the shop be considered afresh. So far as the case of respondent No.1 is concerned, we have already noted above that a joint application of the outgoing tenant and respondent No.1 for his entry as a tenant of the shop was rejected by the competent authority. It is also evident that the application of respondent No.1, under Section 14 of the Act for regularisation of his tenancy, was rejected by the District Supply Officer on the ground that he and the landlord were in collusion and that he was an unauthorised occupant. He held thus, after considering the entire facts on record he arrived at the conclusion that in regard to the possession on the disputed shop by Dinesh Kumar, the owner was in conspiracy after November 1976. Reverting to the order of allotment, the third respondent concluded as follows:- After perusal of all the affidavits and evidence of the parties and hearing arguments of the learned counsel

for the parties, I arrive at the conclusion that out of all the four applicants, (1) R.K. Parashar, (2) Gopal Krishan Sharma (3) Dinesh Kumar and (4) Chandrapal, the stronger need is that of Dr. R.K. Parashar. Dr. R.K. Parashar wants to establish private clinic in disputed shop, which is in the public interest.

Though the above finding of the third respondent indicates that all applications were considered on merits, yet a reading of the whole order gives an impression that the unauthorised occupation of respondent No.1 was weighed with the authority while allotting the shop to the appellant. The revisional authority having noted various unsuccessful attempts made by respondent No.1 to legalise his unauthorised occupation of the shop, maintained the order of allotment in favour of the appellant on the rule of priority contained in Rule 11 of the Rules. A plain reading of Rule 11 of the Rules shows that it applies only to the residential premises and this position is also not disputed by the learned counsel for the appellant. This takes us to the consideration of two aspects:(i) whether the order of allotment in favour of the appellant can be sustained under Rule 10(8)(b) of the Rules and (ii) whether respondent No.1 is disqualified under Rule 10(5)(d) of the Rules. They read as follows :- 10. Allotment Procedure

(1) to (4) \*\*\* \*\* \*

(5) A building shall not ordinarily be allotted to the following persons or for the following purposes

(a) to (c) \*\*\* \*\* \*

(d) For accommodating a person who has entered into unauthorised occupation of the building or any part thereof without the written consent to the landlord.

(6) to (7) \*\*\* \*\* \*

(8) In making allotment of non-residential buildings, regard shall be had to the following guiding principles which shall not be departed from save for exceptional reasons to be recorded in writing :

(a) \*\*\* \*\* \*

(b) Preference shall be given to qualified technical personnel (such as medical or engineering graduates) who want to engage in self-employment.

First, we shall take up the question of disqualification of respondent No.1. Clause (d) of sub-rule (5) of Rule 10 of the Rules mandates not to allot a building to accommodate a person who had entered into unauthorised occupation of the building or any part thereof without the written consent of the landlord. It would be appropriate to note here that Section 13 of the Act says that where a landlord or a tenant ceases to occupy a building or part thereof no person shall occupy it in any capacity on his behalf otherwise than under an order of allotment or release under Section 16 of the Act and if a person so purports to occupy it he shall without prejudice to the provisions of Section 31 of the Act be deemed to be an unauthorised occupant of such building or part. Section 31 of the Act provides penalties which can be imposed on any person who

contravenes any of the provisions of the Act or any order made thereunder; even an attempt or abetment of such contravention is also made punishable. On conviction, an offender may be sentenced to imprisonment which may extend to six months or fine which may extend to Rs.5,000/- or both. There can be no doubt that a person who has occupied a premises without the permission of the landlord is an unauthorised occupant, a trespasser. The rule making authority is presumed to be aware of two categories of the unauthorised occupation of a building : (i) otherwise than with the written consent of the landlord and (ii) otherwise than under an order of allotment or release. But the scheme of Rule 10(5)(d) of the Rules suggests that the rule making authority has condoned the authorised occupant so declared under Section 13 of the Act and has taken note of only an authorised occupant of a building without the consent of the landlord. Under that rule it is only when a person has entered into unauthorised occupation of the building or any part thereof without the written consent of the landlord then ordinarily the building shall not be allotted to him. In the instant case, admittedly, respondent No.1 had the consent of the landlord, nay he is in collusion with the landlord as found by the District Supply Officer but that by itself would not disentitle him to stand a chance of being considered for purposes of allotment in view of the language of clause (d) of the Rules. The position is that he would neither have any preference on account of being in occupation of the shop nor will he incur any disqualification for having violated Section 13 of the Act. Thus, his claim cannot be brushed aside on the ground of an unauthorised occupant as he has incurred no disqualification under clause (d) of the Rules. In the view we have expressed above, it is unnecessary to consider the other requirements of clause (d). So far as clause (b) of sub-rule (8) of Rule 10 of the Rules (quoted above) is concerned, it applies to a non-residential building. Sub-rule 8 directs that in making allotment of non-residential buildings regard shall be had to the guiding principles contained in clauses (a) to (c) and that the principles contained therein shall not be departed save for exceptional cases for which reasons have to be recorded. Clause (b) says that preference shall be given to qualified technical personnel such as medical or engineering graduates who want to engage in self-employment. The fact that the appellant is a medical graduate and is carrying on medical practice was taken note of by the third respondent; but, the second respondent and the High Court did not advert to that aspect. However, it appears the third respondent in considering the claim of respondent No.1, under the impression that he being in unauthorised occupation, was ineligible under Rule 10(5)(d) of the Rules, which we have held above, is not correct. For the foregoing reasons, we feel that the High Court is justified in remitting the matter to the Rent Control and Eviction Officer (respondent No.3) to decide the matter of allotment afresh. We, therefore, do not propose to express any opinion on the contentions of the appellant that the attempt of respondent No.1 in getting an illegal entry into the shop in the guise of a partner of the business fell to the ground and his application to have his unauthorised occupation of the shop regularised under Section 14 of the Act had also failed, so the shop cannot be allotted to him as that would defeat the earlier orders. He may be at liberty to raise all contentions before the third respondent who shall consider the comparative merits of the appellant and respondent No.1.

Except to the extent, indicated above, we do not consider it appropriate to interfere with the order of the High Court. In the result, Civil Appeal No.1472 of 1998 is dismissed and Civil Appeal no.1473 of 1998 is allowed. In the facts and circumstances of this case we make no order as to costs.

JUDIS