PETITIONER:
BABU SINGH CHAUHAN

Vs.

RESPONDENT:
RAJKUMARI JAIN & ORS.

DATE OF JUDGMENT01/02/1982

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
MISRA, R.B. (J)

CITATION:
1982 AIR 810 1982 SCR (3) 114
1982 SCC (1) 520 1982 SCALE (1)135
CITATOR INFO :
R 1984 SC1376 (7)
R 1987 SC 22 (7)

ACT:
U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972-Sections 16(1) (b) and 17(2)-Scope of.

HEADNOTE:
Section 16(1) (b) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 empowers the District Magistrate to release the whole or any part of a building or any land appurtenant thereto, in favour of the landlord. Section 17(2) provides that where a part of a building is in the occupation of the landlord for residential purposes or is released in his favour under section 16(1) (b) for residential purposes the allotment of the remaining part thereof under clause (a) of sub-section (1) shall be made in favour of a person nominated by the landlord.

On intimation from tho tenant that he was vacating the premises, the rent control authority allotted them to the appellant without informing the landlady about the allotment. On appeal the District Judge cancelled the allotment made in favour of the appellant

The landlady then made an application for delivery of possession of the premises. This application was rejected on the ground that she had not applied for release of the accommodation. Her application under section 16(1) (b) for release of the premises was rejected and the accommodation was re-allotted to the appellant. The District Magistrate affirmed the order of the rent control authority.

The landlady's writ petition impugning the orders of the courts below was allowed by the High Court. The case was remitted to the courts below for reconsideration afresh of the question of allotment.

In appeal to this Court it was contended on behalf of the appellant that since the landlady was not in actual physical possession of the premises neither section 16(1) (b) nor section 17(2) had any application to the facts of this case.

Dismissing the appeal,

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HELD: The order of the prescribed authority allotting the premises to the appellant was without jurisdiction and against the plain terms of section 17(2) of the Act. The District Judge had rightly allowed the landlady's appeal and cancelled The allotment to the appellant.
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The object of the Act is that where a tenant inducted by the landlord voluntarily vacates the premises, partly occupied by the landlord, allotment in the vacancy should be made only to a person nominated by him, the dominant purpose of such provision being to remove any inconvenience to the landlord by imposing or thrusting on the premises an unpleasant neighbour or a tenant who invades the landlord's right of privacy. While empowering the prescribed authority to allot the accommodation, the Act safeguards the right of the landlord to have a tenant of his choice. [117 B-C, D]

In the instant case if a tenant was thrust on the respondent without allowing her an opportunity to nominate a tenant of her choice it would violate the very spirit and tenor of section 17(2). [120 F]

Possession by a landlord of his property may assume various forms: a landlord living outside the town might retain possession over his property or a part of it either by leaving it in charge of a servant or by putting his household effects locked up in the premises. Such occupation would be full and complete possession in the eye of law. [119 F]

In the instant case from the fact that the landlady was residing in another town and so was not actually residing in the premises it could not be said that she was not in possession of the premises or that she had severed her connection with her own property. [119 G]

The High Court was justified in quashing the orders of the rent control authority because no attempt had been made to approach the landlady for making a nomination in respect of the premises vacated by the original tenant. All that the landlady did was to ask for the release of the premises. Even if this was refused it was incumbent on the rent control authority to have fulfilled the requirements of section 17(2) before making an allotment in favour of the appellant or anyone else. Simply because the landlady was living outside the town it could not be said that the provisions of this sub-section would not apply and that the authorities concerned could make an allotment in favour of any person without giving an opportunity to her to exercise her privilege to nominate a tenant. [120 A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 812 of 1980

Appeal by special leave from the judgment and order dated the 23rd November, 1979 of the Allahabad High Court in Civil Misc. Writ No 479 of 1978.

R.K. Garg, V.J. Francis and S.K. Jain for the Appellant.

Shanti Bhushan, R.K Jain, P.R. Jain and Pankaj Kalra for Respondent No. 1.
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The Judgment of the Court was delivered by

FAZAL ALI, J. This appeal by special leave is directed against a judgment dated November 23, 1979 of the Allahabad High Court allowing a writ petition quashing the order of the Rent Control and Eviction officer and remanding the case

to him for considering the question afresh in accordance with law and in the light of the observations made by the High Court.

The appeal involves a short and simple point but the case appears to have had rather a long and chequered career. Put briefly, the facts of the case fall within a narrow compass so far as the points for decision are concerned. The first respondent, Smt. Rajkumari Jain, inducted Shri Thapalayal as a tenant in the premises in dispute which are situated in the town of Bijnor. The tenant intimated his intention to the Rent Control and Eviction officer to vacate the premises on 25.6.1974 on receipt of the aforesaid application of the tenant a Rent Control Inspector was directed to visit the spot and after visiting the same he reported that the premises in question were likely to fall vacant on 9.6.74. The prescribed authority by its order dated 1.6.74 allotted the premises to the appellant. In fact, the appellant had applied to the authority on 20.5.74 for allotment of the accommodation to him. It appears that these proceedings were taken behind the back of the respondent landlady who was not taken into confidence either by the appellant or by the Rent Control authorities. It was only after the prescribed authority had allotted the premises to the appellant and the respondent-landlady came to know of this fact that she moved the prescribed authority for cancellation of the allotment but her prayer was rejected.

Thereafter, the landlady filed an appeal before the Additional District Judge, Bijnor which was allowed and the allotment in favour of the appellant was cancelled on the ground that the provisions of s. 17(2) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the 'Act') were not complied with. Before narrating further sequence of facts, it may be necessary to examine the relevant provisions of the Act. Section 17(2) of the Act may be extracted thus:

> "Where a part of a building is in the occupation of the landlord for residential purposes or is released in his favour
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> under clause (b) of sub-section (1) of Section to for residential purposes, the allotment of the remaining part thereof under clause (a) of the said sub-section (1) shall be made in favour of a person nominated by the landlord "

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.

In the instant case, the admitted position seems to be that when the prescribed authority allotted the premises to

the appellant, the landlady was not taken into confidence nor was she asked to induct either the appellant or somebody else as the tenant of the premises which were likely to fall vacant or which may have fallen vacant. This was undoubtedly an essential requirement of the provisions of s. 17(2) of the Act as extracted above. In these circumstances, there could be no doubt that the order of the prescribed authority allotting the premises to the appellant was completely without jurisdiction and against the plain terms of s. 17(2) of the Act. It was in view of this serious legal infirmity that the District Judge allowed the appeal filed by the landlady on 27.1.1976 and cancelled the allotment of the accommodation to the appellant. On 2.2.76 the landlady herself filed an application before the District Magistrate, Bijnor for delivery of possession of the said premises to her but the District Magistrate rejected the application by his order dated 8.3.76 on the ground that as the landlady had not applied for release of the accommodation, she could not be allotted the premises straightaway. On 5.4.76 the District Supply officer, Bijnor directed the counsel for the landlady to nominate a person

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for allotment of the premises. As against this, the landlady applied for release of the accommodation to her in terms of the provisions of s. 16(1) (b) of the Act which runs thus:

> "16. Allotment and release of vacant building.
> (1) Subject to the provisions of this Act, the District Magistrate may by order:
> (a) xx xx
> (b) release the whole or any part of such building, or any land appurtenant thereto, in favour of the landlord (to be called a release order)."

The prayer of the landlady under s. 16(1) (b) also appears to have been ignored by the Rent Control authorities and by an order dated 15.4.76, the District Supply officer re-allotted the accommodation to the appellant. This led the landlady to file another appeal before the Additional District Judge, Bijnor who by his Order dated 21.9.77 rejected the plea of the landlady, dismissed the appeal and confirmed the order of allotment. The respondent-landlady there upon filed a writ petition in the High Court challenged the orders of the District Supply officer as also of the District Judge who had affirmed that order and confirmed the order of allotment in favour of the appellant. The High Court by the impugned order allowed the writ petition and sent the matter back to the Rent Control and Eviction officer to consider the question of allotment afresh in view of the observations Made by the High Court.

The appellant then obtained special leave of this Court against the order of the High Court and hence this appeal before us.

In support of the appeal, Mr. Shanti Bhushan, learned counsel for the appellant submitted that the High Court had no jurisdiction to interfere with the concurrent finding of fact given by the District Supply officer and the District Judge confirming the allotment in favour of the appellant and that too in a writ jurisdiction. He also submitted that the landlady was not at all in actual physical possession of the premises and had been living outside Bijnor and, there fore, neither the provisions of s. 16(1) (b) nor those of s. 17(2) of the Act would apply to the facts of the present case. On the other

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hand, the counsel for the respondent submitted that

initially the only question before the Rent Control Authority was whether the allotment should be made to the appellant even though he was not nominated by the landlady under s. 17(2) of the Act. It is common ground that the appellant was not a nominee of the landlady and, as discussed above, the District Judge in his first order had quashed the allotment on the ground that the provisions of s. 17(2) had not been complied with.

It was also argued on behalf of the respondent-landlady that the circumstances having changed, she now wanted to stay in Bijnor permanently and as she wanted additional accommodation she had applied to the District Magistrate under s. 16(1) (b) for releasing the building in her favour. This application was not at all considered on merits by the District Magistrate or by any court for that matter. If the respondent could succeed in convincing the District Magistrate that a case for release of the entire building was made out, then the question of allotting the premises to the appellant would not have arisen at all.

We have gone through the judgment of the High Court in the light of the arguments of the parties and we are inclined to agree with the view taken by the High Court that the mere fact that the lady did not actually reside in the premises which were locked and contained her household effects, it cannot be said that she was not in possession of the premises so as to make s. 17(2) inapplicable. Possession by a landlord of his property may assume various forms. A landlord may be serving outside while retaining his possession over a property or a part of the property by either leaving it incharge of a servant or by putting his household effects or things locked up in the premises. Such an occupation also would be full and complete possession in the eye of law.

It was further argued by Mr. Shanti Bhushan that the landlady had absolutely no reason to stay in Bijnor because she was staying with her son in some other town. That by itself is hardly a good ground for the landlady who was a widow to sever her connections with her own property. Moreover, we do not want to make any observations on the merits of this matter as the High Court has rightly remanded the case for a fresh decision on all the points involved.

So far as the second point is concerned, Viz., the question of allotment of the premises to the appellant, the High Court was fully

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justified in quashing the order of the District Supply officer as affirmed by the District Judge because despite several opportunities no attempt had been made to approach the landlady to nominate a tenant. There is no evidence to show that either the prescribed authority or the Rent Control and Eviction officer ever approached the landlady for making a nomination in respect of the premises vacated by the original tenant and she refused to do so. All that the landlady did was to ask for the release of the premises but even if this was refused it was incumbent on the Rent Control authorities to have fulfilled the essential conditions of s. 17(2) of the Act before making any allotment in favour of the appellant or for that matter any other person. It was suggested that as the landlady was not living 4 in the premises which were locked up, section 17(2) did not apply. We have already rejected this argument because even occupation of apart of a building by the owner which she may visit off and on is possession in the legal sense of the term and, therefore, it cannot be said that the provision of s. 17(2) would not apply and that the Rent

Control authorities could make an allotment in favour of any person without giving an opportunity to the landlady or the landlord to exercise her/his privilege of nominating a tenant.

We have already pointed out that the object of the Act seems to be to arm the owner with the power of nomination so as to protect him/her from unpleasant tenants or indecent neighbours who may make the life of the owner a hell. Moreover, the conduct displayed by the appellant in this case clearly shows that if he was thrust on the respondent without her being allowed an opportunity to nominate a tenant, it will violate the very spirit and tenor of s. 17(2) of the Act.

As we are of the opinion that the order of the High Court has to be upheld we refrain from making any further observations on the merits or any aspect of the matter which have to be gone into afresh as directed by the High Court.

We find no merit in this appeal which is dismissed with costs quantified at Rs. 1,000/- (Rupees one thousand only.).

P.B.R. Appeal dismissed.

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