

**(2000) 03 AHC CK 0059**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 13308 of 2000

Harjeet Kaur

APPELLANT

Vs

Rent Control & Eviction  
Officer.and Another

RESPONDENT

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**Date of Decision:** March 15, 2000

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Hon'ble Judges:** S.N.Agarwal, J

**Final Decision:** Allowed

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### **Judgement**

Sudhir Narain, J.

This writ petition is directed against the order dated 2812000 declaring the disputed accommodation as vacant and thereafter passing an order releasing the disputed accommodation and rejecting the application of the petitioner for recalling the order dated 2812000 on 1622000.

2. Briefly stated the facts are that the petitioner is alleged to have let out the disputed premises in the year 1993/94 of which respondent No. 2 Smt. Amita Das Sharma is landlady. She filed an application for release of the disputed accommodation stating that the petitioner was in possession without an allotment order and it should be treated as vacant. The petitioner filed an objection alleging that the provisions of Act No. 13 of 1972 were not applicable; firstly, for the reason that the disputed accommodation was let out on Rs. 3,000/- per month and secondly, it was constructed in the year 1989 and the provisions of the Act were not applicable. The Rent Control and Eviction Officer passed an order on 2182000 holding that as the petitioner himself admitted that he was let out the accommodation in 1994 he shall be treated in unauthorised occupation without any order of allotment being passed in his favour. His possession shall be treated in violation of Section 11 read with Section 13 of Act No. 13 of 1972. The petitioner filed an application to recall the said order stating the reasons why the petitioner or his

Counsel could not appear in the said case. Respondent No. 1, rejected the application on 1622000.

3. I have heard Sri M.K. Gupta, learned Counsel for the petitioner and Sri K.K. Arora learned Counsel for the respondent.

4. Learned Counsel for the petitioner contended that the petitioner had filed an application to recall the ex parte order dated 2812000 giving the facts as to why he could not appear on the said date. The respondent No. 1 noted the facts stated in the application and objection of respondent No. 3 thereon but without any finding but on the averments made by the petitioner proceeded to decide the application in regard to merits of the case.

5. Sri K.K. Arora, learned Counsel for the respondent, contended that the application shall be deemed to have been allowed as respondent No. 1 noted the arguments raised in respect of merits of the case and has recorded his own finding. It is not necessary to go into the question as to whether the petitioner was justified to remain absent on the date when the case was taken up on the date of hearing as the Rent Control and Eviction Officer has decided the controversies raised by the parties.

6. There were two objections raised by the petitioner on merits. Firstly, that the provisions of Act No. 13 of 1972 were not applicable as the accommodation was let out at Rs. 3,000/ per month. The petitioner's version was that the rent was Rs. 500/ per month. He himself had filed a suit for injunction against the landlord respondent stating that the rent was Rs. 500/ per month and in this writ petition also he did not state that the rent is Rs. 3,000/ per month. His contention is that the respondent No. 3 had filed a suit and in that rent was claimed at Rs. 3,000/ per month. The Court had never accepted that the rent of the premises in question was Rs. 3,000/ per month. The mere averment of respondent No. 3 in the suit that the rent was Rs. 3,000/ per month was itself not conclusive to determine the rate of rent. Respondent No. 3 during the pendency of the proceedings had filed an application for amendment categorically stating that the rent of the premises is Rs. 500/ per month. In view of these facts the rent of the premises having determined at Rs. 500/per month, it cannot be held that the provisions of Act No. 13 of 1972 will not be applicable on this ground.

7. The next contention of the learned Counsel for the petitioner is that the disputed premises was constructed in the year 1989 and therefore, the provisions of the Act will not be applicable. The petitioner appears to have filed a map alleged to have been duly sanctioned by the municipal authorities and it was contended that the construction was made according to the sanctioned map. The contention of respondent No. 3 was that the construction was not made in accordance with the map and it was made prior to the year 1989. Respondent No 1 considered this aspect and recorded a finding that the shop in question was constructed prior to the year

1989 and the provisions of the Act were applicable. It, however, did not refer to the evidence on record led by the parties on this question.

8. In view of the above the writ petition is allowed. The Rent Control and Eviction Officer shall determine the question of date of construction of the premises in question in accordance with law within two months from the date of production of a certified copy of this order. It will, however, be open to the parties to lead evidence on the date of completion of construction.

9. It is made clear if the accommodation in question is treated as vacant, the order of release as passed by the Rent Control and Eviction Officer shall be treated as affirmed.

10. Learned Counsel for the petitioner states that he has been directed to vacate the possession. The petitioner shall not be evicted till the matter is decided by the Rent Control and Eviction Officer. Petition allowed.