

(2000) 05 AHC CK 0077

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 4649 of 1998

Om Prakash Mittal

APPELLANT

Vs

Vth Addl. Distt.Judge,Ghaziabad
and Others

RESPONDENT

Date of Decision: May 25, 2000

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 16, 18

Hon'ble Judges: A.K.Yog, J

Final Decision: Dismissed

Judgement

A. K. Yog, J.

Present petitioner Om Prakash Mittal is the real brother of Respondent No. 3, Chetan Prakash Mittal. Nanak Chand (father of the petitioner and Respondent No. 3, who is the owner of two shops including Shop No. 258 in the tenancy of one Atma Ram (father of Raj Kumar Respondent No. 4) called the shop in question.

2. Admittedly, there was a family settlement (as also "held by the two Courts below) and in pursuance to the same the shop in question has fallen in the share of the Respondent No. 3. It has also come on record that the Respondent No. 3, was employed elsewhere and hence the properties were looked after in representative capacity by petitioner, Om Prakash Mittal, who used to collect rent of the shop in question, being eldest in the family.

3. Atma Ram, erstwhile tenant having died, Respondent No. 3, filed an application for release under Section 16, U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, (U.P. Act No. XIII of 1972), for short called the Act", on the ground that Atma Ram had died issueless, hence the tenancy could not devolve upon anybody and the shop was, therefore, vacant. The Delegated Authority dismissed the application vide judgment and order dated 12th October, 1988 (Annexure 8 to

the Writ Petition).

4. Feeling aggrieved, revision under Section 18 of the Act was preferred by Chetan Prakash Mittal, which was dismissed by^ the then District Judge, Ghaziabad vide judgment and order dated 19th May, 1989 (Annexure 4 to the Writ Petition).

5. Not being satisfied, Chetan Prakash Mittal filed Writ Petition No. 12246 of 1989 in this Court, which was finally allowed by learned Single Judge vide judgment and order dated 15th May, 1992. Civil Revision No. 173 of 1988 was restored to its original number and the same was directed to be decided in the light of the objections made in the High Court's judgment (Annexure 5 to the Writ Petition).

6. On remand from this Court Civil Revision No. 173 of 1988 came up for hearing and the same had been allowed by Vth Additional District Judge, Ghaziabad vide judgment and order dated 17th January, 1998.

7. Not satisfied, Om Prakash Mittal has filed the present petition under Article 226, Constitution of India, praying for quashing of the order dated 17th January, 1998 (Annexure 9 to the Writ Petition).

8. Heard learned Counsel for the petitioner and Shri Chetan Prakash Mittal (in person since h e withdrew power and instructions to the Counsel who was earlier engaged).

9. Shri Santosh Kumar, learned Counsel for the petitioner has raised and pressed one point only pertaining to the question who was landlord of the shop in question. According to Chetan Prakash Mittal, his real brother Om Prakash Mittal petitioner had set up Raj Kumar as adoptive son after death of erstwhile tenant Atma Ram.

10. The Delegated Authority disbelieved theory of Raj Kumar being adopted son of the tenant (Atma Ram).

11. Revisional Court found that Raj Kumar was not legally adopted son of the deceased tenant and did not inherit tenancy right in the disputed shop and, accordingly, affirmed the findings of the Rent Control and Eviction Officer on this issue. This finding has not been assailed or disputed by the learned Counsel for the petitioner.

12. The Revisional Court on Point No. 3 held that Om Prakash Mittal was not the landlord and on the contrary, it was Chetan Prakash Mittal, who was landlord and hence competent to file application for release under Section 16 of the Act.

13. Having perused the record it is abundantly clear that Raj Kumar did not contest the case before the Court below as also mentioned in the impugned order. Om Prakash Mittal was contesting release proceedings by proxy. It was ingenuity of Om Prakash Mittal to set up Raj Kumar as adopted son of the erstwhile tenant. Circumstances speak volume and go show that Raj Kumar had no interest in the accommodation in question.

14. Raj Kumar has neither filed petition independently nor joined this writ petition. Neither he contested/appeared before the Revisional Court nor before this Court. This supports the contention of Chetan Prakash Mittal that Raj Kumar has been set up by Om Prakash Mittal (present petitioner). It may be mentioned that under the Act dispute visavis two contending landlord is not to be decided.

15. The petitioner's main contention is that a landlord is one to whom rent is being paid de facto as per the definition of landlord in the Act. Argument ignores several factual aspects. .

16. Whether mere fact that somebody de facto realizes rent, will determine status, is not a correct preposition of law. It has to be found out whether rent is being realised in his independent right and capacity as landlord or the same is being realised in representative capacity for the benefit of another person. If rent is being collected in representative capacity for the benefit of actual owner, then it will be the owner who shall be the landlord. Otherwise a servant or a brother authorised by original owner to realize rent on his behalf from tenant will become landlord. Law does not contemplate such a situation.

17. In view of the above, I find that the impugned judgment and order dated 17th January, 1998, passed by Revisional Court 5th Additional District Judge, Ghaziabad/respondent No. 1 in Civil Revision No. 173 of 1988, Chetan Prakash Mittal v. Om Prakash Mittal and others, (Annexure9 to the writ petition) does not suffer from any error or illegality, which may warrant interference under Article 226, Constitution of India.

18. The present writ petition is devoid of merits and is accordingly, dismissed. Stay order/interim order stands discharged. No order as to costs.