

(2002) 01 AHC CK 0092

Allahabad High Court

Case No: C.M.W.P. No. 2907 of 2002

Jagdish

APPELLANT

Vs

District Judge, Kanpur and
Others

RESPONDENT

Date of Decision: Jan. 23, 2002

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 16, 21

Citation: (2002) 1 AWC 766

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

Bench: Single Bench

Advocate: P.N. Khare, for the Appellant; P.K. Srivastava, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Yog, J.

Heard Sri P.N. Khare, learned counsel for the petitioner as well as Sri P.K. Srivastava for contesting landlord-respondent No. 3.

2. The petitioner admitted his status that of an unauthorised occupant as recorded vide judgment and order dated July 22, 1995 passed by 1st Additional Judge Small Causes Court, Kanpur Nagar in J.S.C.C. Suit No. 54 of 1983. Rajeshwari v. Jagdish, (Annexure-1 to the writ petition) and thereby defeated the suit filed by the landlord-respondent No. 3 for eviction and possession of the petitioner, apart from other reliefs before Judge Small Causes. In the said suit, apparently no plea was raised by either plaintiff or the defendant (i.e., petitioner and respondent No. 3) that petitioner was in possession of the accommodation in question prior to 5.7.1976, i.e., the date of commencement of Act No. 28 of 1976.

3. After J.S.C.C. suit aforesaid was decided as not maintainable, the landlord respondent No. 3 filed an application before the delegated authority intimating the

vacancy u/s 16 of U. P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972, U. P. Act No. 13 of 1972, hereinafter called "the Act".

4. The Delegated Authority/Rent Control and Eviction Officer, Kanpur Nagar initiated proceedings for allotment/release of the accommodation in question and in pursuance thereto, an order dated 25.7.1996, declaring vacancy with regard to, the accommodation in question was passed.

5. The landlord, respondent No. 3 simultaneously, it appears, filed an application for release u/s 16 of the Act taking advantage of the fact that the petitioner admitted him to be an unauthorised occupant of the accommodation in question since let out to him without an "Allotment Order" under the Act and hence the accommodation was to be treated as vacant under the Act and thus the landlord, with his ingenuity attempts to have the matter of release decided unilaterally between him and Rent Control and Eviction Officer (avoiding the tenant-treating him as unauthorised occupant).

6. The judgment and order dated 22.7.1995/Annexure-1 to the writ petition passed by Judge Small Causes Court shows that the tenant-petitioner had admitted that the petitioner took the accommodation in question as tenant from the landlord (respondent No. 3) as per agreement executed between him. The landlord/respondent No. 3 did not intimate vacancy and inducted the petitioner as "tenant". The petitioner also without obtaining an allotment order and in breach of the provisions of the U. P. Urban Building (Regulation of Letting Rent and Eviction) Act, 1972 (U. P. Act No. 13 of 1972) called the Act, took possession of the disputed accommodation and thus the petitioner accepted his status as an unauthorised occupant. On these pleading present petitioner (defendant in J.S.C.C. Suit) argued that he was not tenant and J.S.C.C. Court has no jurisdiction. The Court of Judge Small Causes, relying upon the decision in the case of [Nutan Kumar and others Vs. IInd Additional District Judge, Banda and others](#), held that the agreement executed between the landlord and the tenant was in contravention of the statutory provisions of the U. P. Act No. 13 of 1972 and, consequently, the Court directed for returning the plaint to the plaintiff-landlord for being presented before competent court.

7. The learned counsel for respondent No. 3, Sri P.K. Srivastava, states that after return of the plaint, no suit for the eviction of the tenant was instituted before any Court.

8. This also shows that the landlord (respondent No. 3) did accept the petitioner his tenant and to whom he gave possession of the accommodation in question in contravention of the provisions of U. P. Act No. 13 of 1972.

9. From the above, it is clear that both the petitioner and the respondent No. 3 colluded with each other, abetted with each other; in "complicity" to perpetuate "fraud" "on law and their conduct is in clear breach of law. Respondent No. 3 letting

out the accommodation and on the other hand petitioner taking it on rent in contravention of the mandatory provisions of U. P. Act No. 13 of 1972, both acted in breach of mandatory provisions of law deliberately failed to discharge their statutory obligation entering into a transaction prohibited by law. Both the parties are guilty of same offence and equally responsible and hence liable to suffer the consequences at par for their act of committing breach of the statutory provisions of the Act.

10. In fact conduct of landlord is more reprehensible as compared to the tenant. In a transaction like the present, landlord is at an advantage and in a commanding position competent to dictate its terms vis-a-vis a prospective tenant (e.g., charging rent of his choice and exploiting helplessness of the other by not intimating vacancy to the Rent Control and Eviction Officer, deliver possession of the accommodation to a person who has no allotment order in his favour though he has no compulsions and avoiding jurisdiction of the Rent Control and Eviction Officer u/s 16 of the Act and then in future get the accommodation declared vacant by putting forth prospective allottee as "proxy" and then take recourse to a less rigorous provision of Section 16 of the Act, where matter is between landlord and Rent Control and Eviction Officer only of release.

11. Courts cannot and should not come to the aid of a landlord like respondent No. 3 and grant him premium out of his own wrong i.e., entering into illegal transaction and on the other hand subjecting the "tenant" to suffer at all stages, i.e., before and after illegal transaction of letting. Tenant is "shut out" from claiming to be "tenant" also excluded from seeking allotment when proceedings initiated u/s 16 of the Act. Landlord who is equally guilty in the same transaction cannot escape the consequences and shall be liable to suffer in proceedings for allotment u/s 16 of the Act. Release application at his instance is to be ignored. A presumption is to be drawn against him that he did not bona fide or genuinely require the accommodation be released.

12. In order to strike a balance in equities in a matter where proposition of law laid down by Full Bench decision in the case of Nootan Kumar (supra) is applicable, the accommodation shall be treated "vacant" and inferred from the admitted "bundle of facts" of a particular case. A landlord who himself inducted a person as "tenant" without complying with the provisions of the Act, acquiescence by conduct and principle of "estoppel" shall be attracted against him.

13. In my considered opinion in a case u/s 16 of the Act, if ratio of the case Nootan Kumar (supra) is attracted, the Rent Control and Eviction Officer will have no option but to proceed with "allotment" of such accommodation in as much as a "landlord" disentitles him to seek "release" of an accommodation let out against the provisions of the Act.

14. Such a landlord stands disqualified by his conduct to seek relief of release under law. One who himself commits breach of a particular law cannot under principles of equity, complained of breach of said provisions of law by another and Court shall refuse to enforce the provision of the said Act for the benefit of such a defaulter. A landlord, having let out an accommodation without following and in breach of the mandatory provision of the Act, is to suffer and treated at par with his tenant, who is his partner in the illegal transaction/contract of tenancy brought into effect by hoodwinking the provisions of the Act. Landlord's illegal act of letting in breach of the Act, is to be treated "non-est" and totally ignored, not an un rebuttable presumption to be raised from his conduct that he desired to let out without intimation of a "nominee" treating the proceedings as if carried out on the date when landlord illegally himself clandestinely delivered possession to another person as "tenant" such a landlord, sails in this same boat as the tenant; and if tenant is not to be heard, defaulting landlord is also to be kept away in proceedings u/s 16 of the Act.

15. A landlord, guilty of acting in breach of the Act, is guilty of abuse of process of law. He is major gainer in the clandestine deal as compared to the tenant and hence must be placed at par in the same category as the defaulting tenant (called-unauthorised occupant). A tenant branded as unauthorised occupant, cannot be allowed to be dispossessed at the Instance of defaulting landlord generally by proxy or by getting prospective allottees as their proxy and then seek release treating the accommodation vacant u/s 16 of the Act - avoiding release after contest with the tenant u/s 21 of the Act. Landlord in fact estopped by conduct having acquiesced to let out the accommodation.

16. Consequently, I hold that the accommodation in question has been rightly declared as "vacant" on admitted facts between the parties. I find no manifest error apparent on the face of record. No Interference is warranted by this Court in exercise of its extra-ordinary discretionary jurisdiction under Article 226, Constitution of India.

17. At this juncture Court takes note of the fact that the existing provisions of the Act declaring vacancy have failed to achieve the desired object and publication on notice board of the office of Rent Control and Eviction Officer is an eye wash entering in itself pitfalls to be exploited to ensure that concerned have no notice of the vacancy.

18. The release order in favour of the landlord with respect to the accommodation in question declared void. The delegated authority is directed - (i) not to give effect to the said order of release passed in favour of the respondent No. 3; (ii) notify the vacancy on the notice board as contemplated under the Act ; (iii) "Vacancy" of the accommodation in question to be published in two news papers (one Hindi and one English) having wide circulation in the city/district (approved by the concerned District Magistrate) to ensure wide notice and information to the concerned public : and (iv) proceed with the allotment after 15 days of the publication in accordance

with law.

19. A writ of mandamus is further issued directing District Magistrate, Delegated Authorities/the Rent Control and Eviction Officer to declare vacancy, apart from the notice board on their office, also in two newspapers of the concerned city having wide circulation giving information and genuine opportunity to the interested public to apply for allotment and ensuring that the proceedings u/s 16 of the Act are not by proxy and that allotment proceedings are not the sham proceedings - based on surreptitious conduct of the officials/employees in their offices and the unscrupulous members of the public.

20. Copy of this order shall be sent to all District Magistrate in the State of U. P. having jurisdiction under U. P. Act No. 13 of 1972 for information to the Delegated Authorities exercising Jurisdiction u/s 16 of the Act to publish "vacancy" in two newspapers of repute having wide circulation in the concerned city/district before proceeding with "allotment"/release proceeding u/s 16 of the Act in future.

Copy of this order shall also be sent to the Chief Secretary, State of U. P., Lucknow by the learned standing counsel forthwith so that adequate legislative amendment in the Act be considered to check the misuse of "vacancy" as indicated above.

The writ petition is dismissed subject to the observations and directions as above.