

(2006) 01 AHC CK 0109

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 19614 of 1985

Salig Ram

APPELLANT

Vs

Rent Control and Eviction Officer
& Ors.

RESPONDENT

Date of Decision: Jan. 12, 2006

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 3

Hon'ble Judges: S.U.Khan, J

Final Decision: Allowed

Judgement

S.U. Khan, J.

1. This is tenant's writ petition directed against the order dated 4121985 passed by Rent Control and Eviction Officer/ACM II, Kanpur in case No. 144 of 1985 declaring the vacancy of the accommodation in dispute. Accommodation in dispute is as Chabutara having tin shed over it. Landlordrespondent No. 2 has filed his own counteraffidavit in this writ petition and in para 4 thereof it has been stated that:

◆Petitioner is tenant of a Chabutara only and tin shed over the chabutara was placed by him. The tin shed does not belong to the trust property (landlord).◆

2. Respondent No. 2 Shyamji Dubey is the Receiver of the Trust Pancham Gadaria to which property in dispute belongs. Rent Control Inspector in its report dated 3091995 reported that property in dispute was a small Chabutara having a tin shed and that there was no door etc. in the said property. Rent Control and Eviction Officer only and only on the basis of the report of Rent Control Inspector held that the property in dispute was building as defined under Section 3 (i) of U.P. Act No. 13 of 1972 and it was vacant as it was in occupation of unauthorized occupant. Petitioner has specifically raised objection before the Rent Control and Eviction Officer to the effect that property in dispute was not building as defined under the

Act, hence the Act was not applicable thereupon and the building could neither be declared vacant nor allotted to any one.

3. According to Section 3 (i) of the Act building means a roofed structure. If structure has been the tenant on the land let out to him, the property will not be covered by U.P. Act No. 13 of 1972 ipso facto for the reason that at the time of vacation tenant will be entitled to remove the structure raised by him. Accordingly, even if it is held that placing the tin shed by the tenant converted the Chabutara into building, Act did not become applicable. Secondly, there is no finding that tin shed was placed upon walls of any sort. If on open piece of land tin shed is placed supported by angle irons etc., the property does not become building. Roofed structure means roof placed upon some sort of walls, which may be either pucca or kachcha or wooden or of tin. In this regard reference may be made to Sana Ullah v. A.D.J., 1979 (5) ALR 113 : 1979 ARC 138 (Para 16).

4. Accordingly, I hold that the provisions of U.P. Act No. 13 of 1972 are not applicable to the property in dispute. The order of the Rent Control and Eviction Officer is utterly without jurisdiction.

5. Writ petition is, therefore, allowed. Impugned order dated 4 12 1985 is set aside.