

(2005) 09 AHC CK 0148

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 22555 of 1987

Krishan Chandra

APPELLANT

Vs

VIIIth A.D.J., Kanpur &
Ors.

RESPONDENT

Date of Decision: Sept. 5, 2005

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 16(1)(b)

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

Final Decision: Allowed

Judgement

S.U. Khan, J.

Petitioner is allottee tenant of shop No. 24/3 Mall Road, Kanpur. The rent of the shop is Rs. 56 per month. Shop in dispute was declared vacant by the R.C. and E.O. on 1091979. Thereafter, respondent No. 3 Sri Krishna (since deceased and survived by his widow Smt. Krishna Devi) filed release application under Section 16 (1) (b) of U.P. Act No. 13/1972. Respondent No. 3 was one of the landlords of the shop in dispute. The said release application was rejected against which respondent No. 3 filed Rent Revision No. 85/1981. The said revision was dismissed on the ground that other coowners had not been impleaded in the release application. Thereafter, second release application was filed by respondent No. 3 before R.C. and E.O. impleading other coowners also. Other coowners did not object to the release of the shop in dispute in favour of respondent No. 3. The second release application was also dismissed by R.C. and E.O. on 1121982. Through the said order need of respondent No. 3 was not found to be bona fide and it was also observed that petitioner was carrying on business in the shop in dispute. The prescribed authority further held that some of the coowners were not served and one coowner i.e. Navin Kumar opposed the release application. On the next date i.e. 2121982 shop in dispute was allotted to the petitioner. Against the order rejecting the release

application dated 12121982 revision was filed by respondent Nos. 3, 4 and Shri Chaman Lal being Rent Revision No. 377 of 1982. The said revision was allowed on 1101983 and the matter was remanded to R.C. and E.O. After remand R.C. and E.O. through order 831984 again rejected the release application of respondent No. 3 and on the very next date i.e. 931984 again allotted the shop in dispute to the petitioner. Against the said order respondent Nos. 3 and 6 others i.e. the other landlords respondents of this writ petition filed Rent Revision No. 94/1984. Vth A.D.J. Kanpur through judgment and order dated 2281986 allowed the revision set aside the order of R.C. and E.O. dated 831984 and 931984 and remanded the case to the R.C. and E.O. for fresh finding on the bona fide need of the landlord Sri Krishna. In the said revision Raj Kumar was also revisionist. The Revisional Court held that all the landlords must be treated to be parities and represented. After remand by Revisional Court R.C. & E.O. through order dated 1451987 released the building in favour of respondent No. 3. The said order was passed by R.C. & E.O./Additional City Magistrate Vth Kanpur Nagar in Case No. 125 of 1982, Against order dated 145 1987 petitioner filed Rent Revision No. 86/87 which has been dismissed by VIIth A.D.J. Kanpur on 27111987 hence this writ petition.

2. Tenant has got no right to compel the landlords to quarrel among them selves so that tenant's possession may be protected or building may be allotted to the tenant. Even one of the landlords is entitled to file release application. No other landlord objected to the release in favour of respondent No. 3. In release proceedings under Section 16 of the Act prospective allotted has got no right to be heard and he cannot oppose the release application of the landlord (vide Talib Hasan v. A.D.J., 1986 (12) ALR 113 (FB)).

3. In view of what has been stated above, writ petition would have been allowed. However, during pendency of writ petition respondent No. 3 Shri Krishna has died. Only his widow has survived him. The widow has not come forward to assert that she proposed to start some business from the shop in dispute. The Supreme Court in K.N. Agarwal v. D. Devi, 2005(1) JCLR 115 (SC) : 2004(5) ALR 419(SC), has held that death of landlord for whose need shop is released renders the release order void. In view of this, writ petition is to be allowed only on the ground that respondent No. 3 has died during pendency of the writ petition. Accordingly, writ petition is allowed. Impugned orders releasing the shop in dispute in favour of deceased respondent No. 3 are set aside. The consequence is that allotment order in favour of petitioner is revived. If any other landlord bonafidely requires the shop in dispute he is at liberty to initiate release proceeding against tenant petitioner before prescribed authority under Section 21 of the Act.

4. I have held in Khursheeda v. A.D.J., Allahabad, 2004(2) JCLR 452 (All) : 2004(55) ALR 586, that while granting relief to the tenant against eviction in respect of building covered by U.P. Rent Regulation Act the Writ Court is empowered to enhance the rent to a reasonable extent. Shop in dispute is situated on Mall Road Kanpur. Kanpur is most expensive city of U.P. and Mall Road is the best market of the Kanpur hence rent of Rs. 56 per month which petitioner is paying to the landlord is virtually no rent. Accordingly, it is directed that with effect from September, 2005 onwards petitioner shall pay rent to the

landlord respondents at the rate of Rs. 1,500/ per month.