

Vijay Kumar Vs Distt.Supply Officer/Delegated Authority & Ors.

Court: Allahabad High Court

Date of Decision: Aug. 24, 2005

Acts Referred: Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 – Section 12(3)

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

Final Decision: Dismissed

Judgement

S.U. Khan, J.

Respondents 2 and 3, Anil Agrawal and Shrimati Poonam Agrawal, are the landlords, respondent No. 5 filed an allotment

application under Section 16 (1) (a) of U.P. Act No. 13 of 1972 before rent control and Eviction Officer alleging therein that Baldev Mitra,

respondent No. 4, who was the tenant had constructed his own house and had shifted his residence there, hence the house in dispute was vacant.

Rent Control and Eviction Officer/District Supply Officer, Meerut, before whom the case was registered as case No. 41 of 2001 Sanjay Gupta v.

Anil Agarwal, through order dated 29/9/2005 declared the house in dispute to be vacant under Section 12 (3) of the Act. Tenant Vijay Kumar,

who is son of Baldev Mitra, has filed the instant writ petition, challenging the order of declaration of vacancy.

2. Learned Counsel for the petitioner has argued that when the house in dispute was given on rent to his father Baldev Mitra, petitioner was also

major and hence he also became tenant. Firstly, this proposition cannot be accepted . If the tenant at the time of taking the house on rent had got

some major sons they do not become ipso facto tenant and secondly, even if it is assumed that the tenancy was joint and petitioner and his father

were joint tenants, still no difference will be made as even in the case of joint tenants, acquisition of another house by one of the joint tenant causes

vacancy of the entire house. Contrary view was taken by the Supreme Court in the Authority reported in Mohd Azim v. District Judge, (AIR 1985

SC 1118). However, the said authority was overruled by a larger Bench of the Supreme Court in Harish Tandon v. A.D.M., (1996(2) JCLR 252

(SC) : AIR 1995 SC 676).

3. Learned Counsel for the petitioner has cited Kamla Dube v. District Judge, (1983 ARC 404), to counted that if a person in occupation has

acquired the status of tenant under Section 14 of the Act then vacancy cannot be declared and, such person shall at least be heard. In the instant

case there is no question of acquisition of status of tenant under Section 14 of the Act. None of the ingredients of the said Section are either

pleaded or proved.

4. The other authority cited by learned Counsel for the petitioner is Rasool Bux v. Prescribed Authority, (1979 ARC 186 (DB)). In the said

authority it was held that declaration of vacancy without notice given to the sitting tenant is bad. The said authority is also not applicable, because

notice was given to respondent No. 4, i.e. the father of the petitioner. Respondent No. 4 Baldev Mitra, father of the petitioner appeared and

supported the case of landlord and applicant for allotment. Notice to one joint tenant or appearance of one joint tenant is quite sufficient. This

observation has been made by me on the presumption that petitioner was joint tenant with his father. However, I am not recording any finding that

the petitioner was joint tenant with his father.

5. In view of the above, I do not find any merit in the writ petition. Hence it is dismissed.

6. However, looking to the fact that the father of the petitioner himself supported the landlord and the applicant for allotment, clearly, supports the

contention of the learned Counsel for the petitioner that this all happened due to the bad relations in between the motherinlaw and daughterinlaw

i.e. petitioner's mother and wife. Accordingly I am of the opinion that reasonable time must be granted to the petitioner to vacate.

7. Learned Counsel for landlord respondent strongly opposes grant of time. His contention is that petitioner only had a right of residence alongwith

his father and independently he cannot claim any right. In a recent authority report in B.P.A. Anand v. S.A. Reddy, (AIR 2005 SC 986), para 11,

it has been held that in certain case even the persons who have only got a right of residence with the tenant can continue the proceedings. In view

of this I find that it is quite permissible under law to grant time to vacate to the petitioner who is held by me to be only son of the tenant and not

either joint tenant alongwith father or tenant in his independent right.

8. Accordingly petitioner is granted one year's time to vacate provided that within one month from today he deposits before the Rent Control and

Eviction Officer Rs. 12,000/ as damages for use and occupation for his period of one year, which has been granted to him to vacate @ Rs. 1000/

p.m. This amount shall at once be paid to the landlord respondents 2 and 3. It is made clear that this time to vacate which has been granted to the

petitioner include petitioner's father respondent No. 4 also, whosoever may be in possession shall vacate within one year from today. Petitioner is

also directed to file an undertaking before the Rent Control and Eviction Officer to the effect that on or before the expiry of aforesaid period of one

year he will willingly vacate and hand over possession of the property in dispute to landlord. This undertaking shall be binding upon respondent

No. 4 also and he will not be permitted to raise objection at the end of one year that instead of petitioner he was in possession. Even if he is in

possession he shall also vacate immediately after the expiry of aforesaid period of one year.

9. Proceedings for release/allotment shall go on with all their natural consequences except that delivery of possession shall not take place before a

year, as aforesaid.

10. Writ petition is dismissed, with the above observation.