
Sunil Chatterjee and Anr. Vs Rent Control and Eviction Officer & Ors.

Civil Miscellaneous W. P. No. 9606 of 1995

Court: Allahabad High Court

Date of Decision: May 24, 1995

Acts Referred:

Constitution of India, 1950 " Article 226#Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 " Section 16, 17, 18#Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 " Rule 8

Citation: (1995) 05 AHC CK 0081

Hon'ble Judges: M.Katju, J

Final Decision: Allowed

Judgement

M.Katju, J.

This writ petition has been filed for a writ of certiorari for quashing the impugned notice dated 1211995 (Annexure 1 to the petition) and the orders dated 9111994 (Annexure 5), 13111994 (Annexure 7) and 121994 (Annexure 9 to the petition) and for a writ of

mandamus directing the respondents to restore the possession of the disputed house to the petitioners.

2. I have heard Shri Ravi Kant and Sri S. K. Garg learned counsel for the petitioner and Shri Ranjit Saxena, learned counsel for the respondents

No. 3, and the learned standing counsel for respondents No. 1 and 2, and have perused the writ petition, counter and rejoinder affidavit.

3. The allegations in the petition are that late Sukmar Chatterjee was the owner of premises No. 18 Rajpur Road, Dehradun which is the property

in dispute. He died on 4121994 (wrongly mentioned as 40 years ago) leaving behind him the petitioners and some other relations of his heirs and

legal representatives. Petitioner No. 1 Sunil Chatterjee is working in Star Paper Mills, Saharanpur and petitioner No. 2 is working and residing in

Delhi. Sukumar Chatterjee was residing in the house in dispute and looking after it till his death on 471994 Tausif Ahmad, respondent No. 3

moved an application for allotment of the portion of the house in dispute consisting of four rooms, latrine, kitchen and bath room on the ground

floor. According to the allotment application this portion was previously occupied by one Shri Anna who vacated the aforesaid house and the

premises then became vacant. A true copy of the allotment application is Annexure 1 to the petition. It is stated in paragraph 6 of the writ petition

that at no point of time the ground floor was ever let out to any person and it was never occupied by socalled Sri Anna and hence there was no

question of vacating the premises in dispute by the socalled Sri Anna. In paragraph 7 it is stated that the premises in dispute was physically

occupied by late Sri Sukumar Chatterjee till his death. In the allotment application only Sukumar Chatterjee is alleged to be the landlord of the

house in question. The petitioners and other heirs and legal representatives were never shown to be the landlords of the house in dispute. In para 9

it is stated that on the aforesaid allotment application the Rent Control and Eviction Officer issued notice on 671994 to late Sukumar Chatterjee,

the alleged outgoing tenant socalled Sri Anna and the prospective allottee. The notice meant for service on late Sri Sukumar Chatterjee was

returned back as unserved. A true copy of the notice dated 671994 alongwith the endorsement made by the processserver is Aunexure 2 to the

petition. In paragraph 1 of the petition it is stated that from the report of the processsever it was clear that the notice meant for late Sukumar

Chatterjee was never served on him and the entire proceedings were ex parte. This was done deliberately so that the petitioners may not acquire

knowledge of the proceedings and may not be able to raise any objection to the allotment in favour of the respondent No. 3. In para 11 it is

alleged that Tausif Ahmad, respondent No. 3 is a local tough and is a habitual house grabber. He is an active member of ruling Samajwadi Party.

The entire proceedings were mala fide with an intention to grab the property in dispute which is a very valuable property. In para 12 it is alleged

that on 1371994 the Rent Control Inspector came for inspection of the house in dispute but he did not make any inquiry from the local residents.

Inspection was not made in the presence of two local persons as required by Rule 8 of the U. P. Urban Buildings (Regulation of Letting, Rent and

Eviction) Rules, 1972. In paragraph 13 it is alleged that the report submitted by the aforesaid Inspector is a fraudulent document. It does not cite

any source in his report to the effect that the socalled Sri Anna had vacated the house or he handed over possession to late Sukumar Chatterjee. In

paragraph 14 it is alleged that the report of the Rent Control Inspector does not state the correct facts and in fact, it is a procured report. A true

copy of the report dated 1371994 is Annexure 3 to the petition.

4. In paragraph 13 of the petition it is alleged that the entire proceedings for declaration of vacancy as well as allotment in favour of respondent

No. 3 was an open and flagrant violation of mandatory provisions of the Act and Rules framed thereunder. It is further alleged that the conclusion

of the inspection report was never pasted on the notice board in the office of the Rent Control and Eviction Officer for information of the general

public and this was done deliberately. In paragraph 16 it is alleged that the proceedings could not be expedited due to continued agitation of the

lawyers and the movement for Uttarakhand. In paragraph 17 it is stated that a perusal of the order sheet shows that the conclusion of the inspection

report was never pasted on the notice board of the office of the Rent Control and Eviction Officer. The said ordersheet further reveals that except

the respondent No. 3 there was no applicant for allotment of the disputed house. In paragraph 18 it is stated that while it was pleaded that no

notice was ever served on late Sukumar Chatterjee yet for the reasons best known to respondent No. 1, he held the service of notice on late

Sukumar Chatterjee as sufficient. A true copy of the ordersheet is Annexure 4 to the petition, in paragraph 19 it is alleged that on 9/11/1994 on the

basis of the aforesaid material the respondent No. 1 declared the house vacant. A true copy of the order dated 9/11/1994 is Annexure 5 to the

petition.

5. In paragraph 20 it is alleged that after such declaration of vacancy notice was issued to late Sukumar Chatterjee. It is alleged that by this time

process server became more intelligent and he submitted a report dated 11/11/1994 vide Annexure 6. According to this report at the time of

inspection the house in dispute was locked and the process server could not meet either late Sukumar Chatterjee or any member of his family and

his whereabouts was not ascertainable hence he pasted the notice on the outer door of the house in dispute. In paragraph 22 it is alleged that the

aforesaid report is a got up document. Sukumar Chatterjee was physically occupying his house till his death on 4/12/1994 (wrongly mentioned on

8/12/1994). He was old and aged man and there was no question of nonavailability at the time of service of notice. The report of the Process

Server was therefore, clearly a fabricated and manufactured document. In paragraph No. 23 it is alleged that the respondent No. 3 is a very

influential person and is a prominent antisocial element of the town. The entire administration is dancing to his tune and acting as his service agents.

In paragraph 24 it is alleged that on 13/11/1994 the respondent No. 1 allotted the disputed premises to respondent No. 3 vide Annexure 7 to the

petition. In paragraph 25 it is alleged that although the order of allotment was passed on 13/11/1994 attempt were made to forcibly dispossess late

Sukumar Chatterjee from the house in dispute on the same day itself. However, the same could not be possible and hence on the next day i. e.

4/11/1994 the respondent No. 3 applied that possession be delivered to him through police force. A true copy of the letter dated 11/2/1994 is

Annexure 8 to the petition. In paragraph 26 it is stated that the facts stated by Tausif Ahmad, respondent No. 3 in the aforesaid application are

absolutely false and baseless. He never approached late Sukumar Chatterjee for delivery of possession and Sukumar Chatterjee during his lifetime

remained unaware of the allotment proceedings. In paragraph 27 it is stated that the respondent No. 1 within a minute of moving of the aforesaid

application dated 11/2/1994 passed an order directing late Sukumar Chatterjee to deliver possession of the house in dispute. A true copy of the

order dated 11/2/1994 is Annexure 9. In paragraph 28 it is stated that again the Process Server put up a stereotyped report without even visiting

the house in dispute, and in fact his report was written sitting in his office. A true copy of the report dated 11/2/1994 is Annexure 10 to the petition.

6. In paragraph 29 it is alleged that on 12/11/1995 when the office reopened at Dehradun after the Uttarakhand agitation was suspended respondent

No. 1 issued notice in form "D" for eviction of Sukumar Chatterjee. A true copy of the notice is Annexure 10. In paragraph 30 it is stated that the

entire administration of District Dehradun lay prostrate before the respondent No. 3. For taking possession from an old and feeble man, the district

administration employed not only civil police and P.A.C. but also paramilitary force. In paragraph 31 it is stated that Sukumar Chatterjee died on

4/12/1994. On record the possession has been shown to be delivered by a dead man to the allottee. It is stated that there was no regard for legal

proceedings and the authorities were out to forge, manipulate and fabricate the official record, In para 33 it is stated that the petitioner filed a

revision against the order dated 12/11/1994 but the same has not yet been decided. On the other hand, respondent No. 3 has grabbed the property,

is cutting away some trees in the disputed premises and is forcibly trying to occupy the other rooms which are in the occupation of the petitioner.

The petitioners who were employed outside have been making repeated request to the District Magistrate to intervene but to no avail.

7. In paragraph 35 it is alleged that the entire proceedings culminating in the allotment order are exports and non est. In paragraph 37 it is stated

that the order of allotment and declaration of vacancy have been passed by the respondent No. 1 fraudulently and the same are null and void. In

para 39 it is stated that the house in dispute has never been let out to any person. The condition precedent for declaration of vacancy was

nonexistent and hence the respondent No. 1 could not pass the order of allotment. In para 40 it is alleged that even according to the own report of

the process server no notice having been served on Sukumar Chatterjee in July, 1994 and the entire proceedings have been conducted ex parte,

the same was in clear and flagrant violation of Rule 8, In para 43 it is stated that the entire proceedings were conducted in the thick veil of secrecy

and in open and deliberate breach of the principle of natural justice, hence the impugned orders are liable to be quashed. In para 44 it is stated that

the possession of the house in dispute is said to have been taken from a dead person viz. Sukumar Chatterjee who had already expired on

4/12/1994 and this gives rise to an irresistible inference that the entire proceedings were mala fide and fraudulent.

8. In the counteraffidavit filed by the respondent No. 3 the allegations in the petition have been denied. In paragraph 3 it is stated that as per the

own case of the petitioners they are not residing at Dehradun. In paragraph 4 it is stated that Sukumar Chatterjee died on 4121994 and hence the

order passed on 9111994 and 30111994 were valid as they were passed in his life time. In paragraph 7 it is stated that the report of the Rent

Control Inspector clearly mentioned that previously Sri Anna was occupying the premises in dispute and after he shifted from the house the

possession was handed over to Sukumar Chatterjee. Thus deemed vacancy has arisen and the respondent No. 1 rightly passed the order declaring

vacancy on 9111994. In para 8 it is stated that against the report of the Rent Control Inspector the petitioners never filed any objection and now it

is not open to them to say that the ground floor was not let out. In para 9 it is stated that Sri Anna handed over the possession to Sukumar

Chatterjee who occupied it till his death on 4121994. It is further stated that after the allotment order dated 9111994 petitioner were bound to

hand over possession of the said property to the respondent No. 3, and when they did do so the respondent No. 3 filed the application. Initially

form "C" was issued in favour of the respondent No. 3 and thereafter form "D" was issued and possession was obtained by the respondent No. 3

by police force. Photo copy of form "C", the application of respondent No. 3 and form "D" are annexures "C1", "C2" and "C3". The possession

was obtained by the respondent No. 3 through police force on 1511995. In para 10 it is stated that Sukumar Chatterjee never raised any

objection against Inspector's report and after his death the petitioners who are his legal heirs and representatives cannot raise this plea. Sukumar

Chatterjee was duly served with the notice but he did not appear. Respondent No. 1 has recorded a finding on 9111994 as well as in the order

passed on 30111994 that the service on the landlord is sufficient. In para 12 it is stated that it is wrong to say that the proceedings were ex parts.

In paragraph 13 it is stated that it is wrong to say that the respondent No. 3 is a local tough and is a habitual house grabber. In paragraph 17 it is

stated that it is wrong to say that the respondent No. 3 has got the allotment order in violation of law. In paragraph 19 it is stated that Sukumar

Chatterjee was duly served but he avoided appearance before respondent No. 1 and hence the impugned orders were passed. In para 25 it is

denied that the respondent No. 3 is an antisocial element or member of Samajwadi Party or the entire administration is dancing to his tune. In para

30 it is denied that the Process Server submitted a stereo typed report. In paragraph 32 it is stated that Sukumar Chatterjee died on 4121994 but

respondent No. 1 did not have knowledge about his death. In paragraph 35 it is stated that the petitioners have already filed a revision before the

District Judge in December, 1994. In para 38 it is denied that there was any fraud.

9. A counteraffidavit has also been filed by the respondent No. 1 and 1 have perused the same. In para 8 it is stated that one Sri Anna was the

tenant of the property in dispute and has vacated the same. In paragraph 9 it is stated that the respondent No. 1 had no knowledge of the death of

late Sukumar Chatterjee. In para 12 it is stated that the service on Sukumar Chatterjee was effected in accordance with the relevant rules. In para

17 it is denied that the proceedings for declaration of vacancy as well as allotment were in violation of law. It was further denied that the conclusion

of the Inspector's report was never pasted on the notice board. In paragraph 24 it is denied that the Inspector's report was a got up report or that

it was fabricated. In para 25 it is denied that the administration is dancing to the tune of respondent No. 3 or acting as his service agents.

10. A supplementary rejoinder affidavit has also been filed which I have perused. In para 6 it is alleged that the allotment application of respondent

No. 3 itself shows that no need was set up for allotment of the house. The applicant (respondent No. 3) had merely stated that the premises in

dispute was vacant and it should be allotted to him. It is alleged that on this ground alone the allotment order deserves to be quashed. It is further

stated that the entire proceedings were in flagrant breach of provisions of law. In para 8 it is stated that since no notice was served on Sukumar

Chatterjee there was no question of filing objection either to the Inspector's report or declaration of vacancy. In paragraph 9 it is stated that Sri

Anna was never the tenant of the premises in dispute. In paragraph 10 it is stated that since it is established that Sukumar Chattetjee was physically

occupying the premises in dispute till his death on 4121994, hence the allegation that Sri Anna was occupying the premises is clearly false. It is

stated that the respondent No. 3 has committed perjury repeatedly in this case and deserves severe punishment. In paragraph 11 it is stated that

since both the forms C and D were addressed to a dead person they were null and void. In paragraph 12 it is denied that any notice was ever

served on Sukumar Chatterjee. In paragraph 13 it is reiterated that the respondent No. 3 is a local tough and house grabber and is an active

member of Samajwadi Party. In paragraph 14 it is stated that Sukumar Chatterjee and his brother and relations love each other. Had Sukumar

Chatterjee received any notice of any proceedings for declaration of vacancy and allotment, he would have told the petitioners and other relations,

and the fact that he did not do so indicates that he was never served any notice. In para 15 it is stated that the entire proceedings were conducted

ex parte behind the back of the petitioners. It is stated that the records have been manipulated and fabricated and even the basic facts have not

been gone into. In paragraph 35 it is stated that the respondent No. 3 has made mockery of the law and the entire judicial procedure has been

given a clear goby.

11. In the supplementary rejoinder affidavit it is stated in paragraph 6 that the document which his AnnexareSCA1 is a forged and fabricated

document. A cursory look at it will reveal that there is no report of the process server 3 nor does it bears the signature of the process server. It

was thus absolutely clear that the signature of late Sukumar Chatterjee are forged. In paragraph 7 it is stated that the respondent No. 3 has

deliberately and dishonestly withheld the report of the Process Server. In paragraph 17 it is stated that the notice Annexure SCA1 was not

available when the petitioner No. 2 inspected the record, and hence it could not be filed earlier. In paragraph 18 it is alleged that neither late

Sukumar Chatterjee nor the petitioners received any notice at all from the process server. In paragraph 19 it is stated that the respondent No. 3 is

put to strict proof regarding SCA3 and the report is a totally manufactured document fabricated by the Inspector who did not even visit the house

is dispute but prepared it in his office. In paragraph 21 it is stated that there was no evidence on record to justify the conclusion that Shri Anna was

residing in a portion of the house. In para 20 it is stated that the question of vacancy cannot be gone into by the district court and the same can only

be challenged by way of a writ petition in this Court. If the order declaring vacancy is quashed the entire proceeding for allotment will automatically

fall to the ground. In paragraph 30 it is stated that neither the report of the Inspector nor the statement of the alleged two witness for the allotment

specifies the portion which was allotted to the respondent No. 3. In paragraph 31 it is stated that the entire proceedings are an outcome of fraud,

forgery and fabrication of document. In paragraph 36 it is stated that this is an unfortunate case of high handedness and atrocity in view of the stark

fact that possession was taken from a dead man by using P.A.C and para military force. In para 40 it is stated that large scale house grabbing is

taking place in the whole of Uttar Pradesh as is evident from the newspapers, copies of Which are Annexures SRA10 to SRA23.

12. Before dealing with the facts of the case, it is necessary for me to mention that a new phenomenon has arisen in Uttar Pradesh recently, that is

the phenomenon of house grabbing. The modus operandi in the series of cases which have come before this court is almost the same, which is to

procure a collusive allotment order from the Rent Control and Eviction Officer, and then take possession of the house. The same has happened in

the present case also. Illegal house grabbing has become the order of the day in the State of Uttar Pradesh and the time has come when this must

be stopped, otherwise civilized society will cease to exist.

13. In present case from the facts I am satisfied that no real notice was served under Rule 8 of U. P. Urban Buildings (Regulation of Letting Rent

and Eviction) Rules, 1972, hereinafter referred to as the Rules, on Sukumar Chatterjee, owner of the disputed premises. It has been held by the

Supreme Court in *Yogindra Tewari v. District Judge*, 1984 (2) ARC 7, that the Rent Control and Eviction Officer must follow the procedure

prescribed under Rule 8 of the Rules. This court in *Smt. Kanta Gupta v. Addl. District Judge*, 1987(2) ARC 108, has held that the procedure

prescribed under Rule 8 of the Rules has to be followed before declaring vacancy, and in my opinion this procedure was not followed in the

present case. In *Roman Catholic Diocese v. Rent Control and Eviction Officer*, 1991 (2) ARC 204, it has been held that if no notice is issued

under Rule 8(2) of the Rules the inspection report is wholly illegal. In paragraph 20 of the said decision it has been held that service of notice under

Rule 8(2) of the Rules is mandatory as has also been held by several other decisions referred to therein. In Achal Singh v. Addl. District Judge,

1987(2) ARC 88, this court held that the inspection has to be done under Rule 8(2) of the Rules only after notice to the landlord.

14. In the present case the report of the Process server dated 1271994 which is part of Annexure 2 to the writ petition clearly shows that no

notice was served on Sukumar Chatterjee. From the facts disclosed it is evident that the so-called service by affixation is fraudulent. In fact, Rule 28

of the Rules makes it clear that affixation is the last mode of service to be availed of only when the other methods fail, and it is evident that no real

effort was made to affect service according to the preceding modes mentioned in the rule. The facts of the case disclose that the Rent Control and

Eviction Officer was sitting with a predetermined mind to allot the premises to the respondent No. 3 and the entire proceeding held by him was

collusive and hence illegal. Thus, I believe the allegations in paragraph 10 of the petition that the entire proceedings were held ex pane. I am also of

the opinion that Rule 8(2) of the Rules was violated because the conclusion of the report of the Inspector was not placed on the notice board as

stated in paragraphs 15 and 17 of the petition which is fortified by the fact that the data of alleged pasting of the notice on the notice board is not

mentioned.

15. It is also relevant to note that the alleged signature of Sukumar Chatterjee in the document which is Annexure SCA1 dated 1471994 is very

different from his signatures in the documents which are annexed as Annexures SRA2 to SRA8 of the said affidavit, for example, Annexure SRA8

is the bank cheque in which the signatures of Sukumar Chatterjee is very different from that in Annexure SCA1. The signatures in the other

documents which are annexed to the supplementary rejoinder affidavit are also very different from the alleged signature in SCA1. Thus, the alleged

signature of Sukumar Chatterjee in the document which is Annexure SCA1, is, in my opinion a forgery hence it is evident that no notice was served

on the landlord and the report dated 11111994 which is part of Annexure 6 of the petition is also fraudulent and collusive.

16. In the Roman Catholic Diocese case (supra) it has been mentioned in paragraph 22 that the notice by affixation is the last method of serving

notice, and it is to be resorted to only after other methods mentioned in Rule 28 to effect service have failed. In my opinion there nothing to indicate

that any effort was really made to serve Sukumar Chatterjee according to the methods mentioned in clauses (a) to (c) of Rule 28, and hence Rule

28 has been violated.

17. It may be noted that in the allotment application no specific portion of the building in dispute has been mentioned. In the Rent Control

Inspector's report (Annexure 3 to the petition), the order of allotment (Annexure 7) and forms "C" and "D" (Annexures 9 and 11) also no specific

portion has been mentioned. In the allotment application no need of the respondent No. 3 has been set up and all that has been prayed is that the

house be allotted in favour of respondent No, 3. In my opinion, it is incumbent in an allotment application to specify the need of the applicant. In

the absence of such specification of the need the allotment application is not maintainable.

18. It is further relevant to note that in the Inspector's report (Annexure 3 to the petition) the source on the basis of which it was reported that one

Anna was the tenant has not been mentioned. In the absence of specification of the source on the basis of which Inspector has reported that one

Anna was the tenant, I am of the opinion that, in fact, there was no tenant of the disputed premises and hence also the premises could not be

allotted. The report dated 13/7/1994 is, in my opinion, collusive and procured and hence is of no avail to respondent No. 3.

19. It is surprising to note that the respondent No. 3 alone was the applicant for the premises in dispute. Ordinarily several persons have applied

for allotment and the very fact that only one person viz. respondent No. 3 applied further fortifies the impression that the entire proceedings were

collusive and fraudulent.

20. In *Express Newspapers v. Union of India*, AIR 1986 SC 72, it has been held by the Supreme Court (in paragraph 118 and 119) that where

there is mala fide exercise of power, it renders the impugned action void and ultra vires. In paragraph 118 of this decision following observation of

Lord Deeming in *Lazarm Estates Ltd. v. Beasley*, (1956) 2 QB 702, has been quoted:

No judgment of a Court, no order of Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

21. In my opinion the entire proceedings before the Rent Control and Eviction Officer were fraudulent and collusive and this vitiates the said

proceedings and renders all the impugned orders null and void.

22. It may be mentioned that by another order dated 13/4/1995 I had directed the Home Secretary and Director General of Police, Uttar Pradesh

to file their personal affidavits stating how many cases of illegal house grabbing have come to their notice during the last three months, giving details

of the same. In pursuance of this direction the Principal Home Secretary and the Director General of Police, U. P. appeared personally before me

and filed their personal affidavits in which they have given the list of several cases relating to illegal house grabbing in Uttar Pradesh and also stated

that the State Government has now taken action against the illegal house grabbing with full seriousness and have issued clear orders to all the

authorities to take serious action in the matter. A perusal of those affidavits makes it clear that in U. P. illegal house grabbing is going on for some

time as admitted by the authorities themselves.

23. Learned counsel for the respondent No. 3 has urged that the petitioners have an alternative remedy under Section 18 and is in fact pursuing

that remedy. It is no doubt true that ordinarily this Court does not interfere in writ jurisdiction under Article 226 of the Constitution in there is an

alternative remedy, particularly when it is being pursued. However, it is well settled that alternative remedy is not an absolute bar to exercise of

jurisdiction under Article 226 of the Constitution, and it all depends on the facts of case. In the present case in view of the glaring illegalities and

collusion I am of the opinion that this court should invoke its discretion under Article 226 of the Constitution and interfere in the matter despite the

alternative remedy in order to do justice. Moreover it has been hold in several decisions that no revision lies against an order declaring vacancy,

and only a writ petition is maintainable vide *Sushi I Kumar Gupta v. IVth Addl. District Judge*, 1992 AWC 692 and *Shobran Singh Sharma v.*

IVth Addl. District and Sessions Judge, 1993(2) ARC 421.

24. In the circumstances, this petition is allowed, the impugned notice dated 1211995 (Annexure 11 to the petition), order dated 1121995 f

Annexure 9 to the petition), order dated 13111994 (Annexure 7 to the petition) and the order dated 9111994 (Annexure 5 to the petition) are

held to be illegal and are hereby quashed. The possession has already been restored to the petitioners in pursuance of the order of this court dated

1341995.

25. Learned counsel for the respondents submitted that the petitioners are not entitled to possession of the house in question without any release

order in their favour. I am not in agreement with this submission. In my opinion, there is a distinction between actual vacancy and deemed vacancy.

In the case of actual vacancy the landlord has a right to be in possession even without a release order vide *Srnt. Keshav Devi v, Addl. District*

Magistrate, 1988 AWC 260 paras 14 and 15 and the tenant has no right to oppose the release application of the landlord. These principles would

not apply to a case of deemed vacancy under Section 12, but this is not a case where there is allegation of deemed vacancy but of actual vacancy.

Hence the petitioners have a right to be in possession as held by this Court in *Smt. Keshav Devi's* case (*supra*). No order as to costs.