
Abdul Khaliq Vs Addl. District Magistrate (Supplies/R.C.& E.O.), Varanasi

Civil Miscellaneous Writ Petition No. 26215 of 2001

Court: Allahabad High Court

Date of Decision: Nov. 14, 2006

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 " Section 12, 16

Hon'ble Judges: Sanjay Misra, J

Final Decision: Allowed

Judgement

Sanjay Misra, J.

Heard Sri A.K. Singh, learned Counsel for the petitioner and Sri C.K. Parikh learned Counsel appearing on behalf of

respondent No. 2.

2. By means of this writ petition, the petitioner seeks to challenge the order dated 2952001 passed in Case No. 94 of 1998 by the Rent Control

and Eviction Officer, Varanasi whereby deemed vacancy has been declared with respect to one shop situate on the ground floor of House No.

S3/2333 Ajeej Katra Mohalla Dithori Mahal, Varanasi. Learned Counsel for the petitioner contends that the petitioner has been a tenant of the

shop in question since prior to enforcement of U.P. Act No. 13 of 1972. He contends that he had filed a Suit No. 637 of 1990 wherein a decree

dated 223 1992 had been passed in his favour finding him to be a tenant of the respondent landlord. The respondent No. 2 thereafter filed a Suit

No. 163 of 1992 before the Judge Small Causes for eviction of the petitioner on the ground of arrears of rent. The said suit filed by the landlord

was dismissed on 391998 and the said judgment became final because it was not challenged by any of the parties before any higher Court. In the

meantime the petitioner filed a Suit No. 515 of 1996 before the Court of Civil Judge Junior Division), Varanasi for being permitted to install an

electric connection in the shop in question. The said suit was contested and dismissed by the Trial Court. However, the appeal filed by the

petitioner was allowed by the judgment and order dated 30/12/2002 which has also attained finality. After the aforesaid proceedings had concluded

the respondent/landlord filed an application under Section 16 (1) (b) of the Act on 30/10/1998 being Case No. 94 of 1998 on the ground that the

petitioner is an unauthorized occupant of the shop in question and therefore, vacancy should be declared with respect to the said shop. Upon the

report of the Rent Control Inspector dated 17/11/1998 it was found that the petitioner was a tenant of the shop in question w.e.f. 1979 without an

allotment order therefore, notices were issued and the petitioner filed his objection. The petitioner also filed a registration certificate issued under

the U.P. Shop and Commercial Establishment Act, 1962 wherein it was shown that the petitioner's shop has been registered in the year 1976/77.

He filed the judgment in the Suit No. 637 of 1990 as also the judgment in the Suit No. 163 of 1992 to indicate that he has been recognized as a

tenant of the shop in question and therefore, he cannot be held to be an unauthorized occupant. The Rent Control and Eviction Officer referred to

the aforesaid documents filed by the petitioner and recorded a finding that from none of the said documents it has been proved that the petitioner

has been a tenant of the shop in question prior to 5th July, 1976. He was, therefore, found to be an unauthorized occupant and hence a vacancy

was declared under Section 12 of the Act.

3. Learned Counsel for the respondents contends that in the Suit No. 515 of 1996 the petitioner had made a statement before the Court that he

was tenant of the shop in question since 1979 and therefore, he contends that the said admission made by the petitioner conclusively proved that

he became a tenant of the shop in question after enforcement of the Act and as such he was in occupation of the shop in question without any valid

allotment order.

4. Learned Counsel for the petitioner on the other hand contends that in view of the decision of this Court in the case of Munna Lal Agarwal v.

Rent Control and Eviction Officer, 2004 (57) ALR 676, it was held by this Court that in view of the decision in Nutan Kumar's case, AIR 2002

SC 3456, the landlord can file suit for eviction on, the grounds mentioned under Section 20 (2) of the Act as also a release application under

Section 21 of the Act on the ground of bona fide need even if the tenancy is on the basis of an agreement and without, an allotment order. This

Court was of the view that when the building is let out by the landlord to which U.P. Act No. 13 of 1972 is applicable without an allotment order

then he cannot file release application on the ground of deemed vacancy under Section 12/16 of the Act. Paras 8 and 9 of the judgment given in

the case of Munna Lal Agarwal (supra) is quoted hereunder:

(8) In my opinion during the currency of Full Bench judgment of the Nootan Kumar landlord could be permitted to file release application under

Section 16 of the Act on the ground that even though he himself let out the building to the tenant still as it was done without allotment order, hence

legally building was vacant. The reason is that in view of the Full Bench landlord had been left with no other option. He Could not file release

application under Section 21 of the Act where need of the landlord might be contested by tenant and tenant could assert his hardship. By virtue of

the Full Bench judgment even suit on the grounds of default etc. as mentioned under Section 20 (2) of the Act could not be filed if the landlord had

let out the building after July, 1976 without allotment order.

(9) However, reversal of the Full Bench judgment by the Supreme Court has changed the entire scenario. Now the agreement is binding between

the landlord and tenant and the landlord can file suit for eviction on the grounds mentioned under Section 20 (2) of the Act and also release

application under Section 21 of the Act on the ground of bona fide need. I am, therefore, of the opinion that if landlord lets out building on which

U.P. R.C. Act is applicable without allotment, then he himself cannot file release application on the ground of deemed vacancy under Section

12/16 of the Act. In release proceedings under Section 16 of the Act tenant/unauthorized occupant cannot participate and he cannot assert that

need of the landlord is not bona fide. As the agreement of letting is binding between landlord and to file release landlord is fully entitled to file

release application under Section 21 of the Act.

5. Learned Counsel for the petitioner has also contended that even for the sake of argument if it is accepted that the building is let out by the

landlord; after 5th july, 1976 without an allotment order, then also it cannot be deemed to be vacant in the circumstances of this case. In view

of the decision of Hon"ble Supreme Court in the case of Mansha Ram v. S.P. Pathak & Ors., this Court had in the case of Anil Kumar Dixit v.

Smt. Maya Triruathi & Anr., held that there, is to be a time limit within which proceeding under Section 12 of the Act can be started. It was held

that a period of twelve years should be taken as reasonable time for initiating the proceedings under the statute from the date cause of action arises.

In the present case it has been stated that even if it is accepted that tenancy was created in the year 1979 without an allotment order the application

under Section 16 of the Act was moved in the year 1998, therefore, the said application was barred by time. There is no reason for this Court to

take any contrary view when the respondent has initiated these proceedings under Section 16 after 19 years then the said proceedings were clearly

beyond time.

6. For the aforesaid reasons, the impugned order dated. 29/5/2001 passed by the respondent No. 1 in Case No. 94 of 1998 cannot be sustained

arid is hereby set aside. The writ petition is allowed. Learned Counsel for the respondents has submitted that the petitioner has been occupying the

shop in question for more than 30 years on a meagre rent of Rs. 175 per month. His contention is that the shop in question is having two doors and

is situated in. a busy commercial area and therefore, in view of the fact that the tenant is being given protection against eviction the ends of justice

require mat the rent of the shop in question may be enhanced by this Court. Learned Counsel for the petitioner contends that the petitioner is

carrying on the business of general merchant in the shop and Rs. 500 can be considered to be reasonable monthly rent. Having considered the

submission of learned Counsel for the parties; it is clear that the monthly rent of the shop in question at the rate of Rs. 175/ is too meagre as on

date for a shop situate in the area concerned which requires to be enhanced in order to do substantial justice between the parties. In view of

aforesaid, the rent is enhanced to Rs. 750 per month from Rs. 175 per in month w.e.f. December, 2006. No order is passed as to costs.