

(1982) 11 AHC CK 0044

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 6030 of 1980

Bishan Chand Chaurasiya

APPELLANT

Vs

The III Additional District Judge
and Others

RESPONDENT

Date of Decision: Nov. 22, 1982

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 14, 16
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Amendment Act, 1976 - Section 14, 2A
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 10(8)

Hon'ble Judges: A.N. Varma, J

Bench: Single Bench

Advocate: V.K. Gupta, for the Appellant; A.K. Banerji and K.N. Tripathi, for the Respondent

Final Decision: Dismissed

Judgement

A.N. Varma, J.

This petition is directed against concurrent orders passed by the courts below releasing the disputed shop in favour of its owner Dr. Biswas u/s 16 of U.P. Act No. 13 of 1972. The Petitioner challenges the said order on the ground that the courts below have illegally refused to grant to the Petitioner the benefit of Section 14 of the said Act.

2. The relevant facts are that the shop in question was allotted to the Petitioner on 7-11-1974 In consequence of declaration of vacancy notified on 31st of October, 1974. Dr. Biswas (Respondent No. 3 herein) who was also one of the applicants for allotment filed an appeal against the said order of allotment, which was allowed on 15th of July 1975. The appellate court while allowing the appeal remanded the case

to the Rent Control and Eviction Officer with a direction that the said authority should consider the case of Dr. Biswas in the light of the provisions of Rule 10(8)(b) which confers a preferential right in favour of certain categories of prospective allottees. On 5-9-1975 the Rent Control and Eviction Officer allotted the disputed shop in favour of Dr. Biswas. Against this order the Petitioner filed appeal and in that appeal obtained on 11-9-75 an order of stay of the operation of the order passed by the Rent Control and Eviction Officer. The appeal of the Petitioner was eventually dismissed by an order dated 26-7-1976. It may be mentioned at this point that in that appeal the Petitioner had filed an affidavit on 19-8-1975 asserting categorically that he had not occupied the disputed shop prior to its allotment in his favour by the first order which was passed on 7th of November, 1974. Against the order dated 26th of July 1976 dismissing the Petitioner's appeal, the Petitioner filed a writ petition in this Court which was allowed on 30-11-78. In the writ petition the argument raised on behalf of the Petitioner was that the courts below had committed an error in applying Rule 10 (8)(b) to the case and in giving the benefit of that rule to Dr. Biswas. This Court while allowing the writ petition and remanding the case to the Rent Control and Eviction Officer directed the Rent Control and Eviction Officer to decide the various applications for allotment afresh in the light of the observations made in that judgment.

3. After the writ petition was allowed by this Court, the Petitioner filed an application on 6th of January, 1979 claiming for the first time that he was entitled to the benefit of Section 14 of the aforesaid Act (as amended by U.P. Act No. 28 of 1976) on the allegation that he was in occupation of the disputed shop as a tenant thereof with the consent of the landlord from before 5th of July, 1976, the date which is relevant for the application of Section 14. Meanwhile, on 13th of March, 1976 Dr. Biswas had purchased the shop from its owner and landlord arrayed in this petition as Respondent No. 4. Dr. Biswas, therefore, filed an application on 19th of April, 1979 applying for the release of the shop as its owner on the ground that he bonafide required the same for his own use and occupation. The Petitioner's application u/s 14 was rejected on 7th of July, 1979. He did not challenge that order by way of any revision or writ petition. Instead he challenged the order of release passed by the Rent Control and Eviction Officer in favour of Dr. Biswas on 23rd of November, 1979. In the revision filed against the order of release, however, the Petitioner pressed his claim u/s 14 which has been negatived by the revisional court. The revision of the Petitioner has been dismissed on the finding that on the facts of the present case he is not entitled to the benefit of Section 14 of the Act.

4. Learned Counsel for the Petitioner contends that the courts below have committed an error in not granting to the Petitioner the benefit of Section 14.

5. Having heard learned Counsel for the parties I find no merits in this petition. The plea of the Petitioner is liable to be rejected both on a preliminary ground raised by the Respondent No. 3 as well as on merits.

6. I shall first examine the plea of the Petitioner founded on Section 14 of the Act on merits. In order to appreciate the submissions of learned Counsel for the parties, it will be convenient to have Section 14 of the Act extracted here:

14. Regulation of occupation of existing tenants.

Notwithstanding anything contained in this Act or any other law for the time being in force, any licensee (within the meaning of Section 2A) or a tenant in occupation of a building with the consent of the landlord immediately before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976, not being a person against whom any suit or proceeding...for authority on the date of such commencement shall be deemed to be an authorised licensee or tenant of such building.

7. It is thus clear that Section 14 would be attracted only if it is found that the Petitioner was in occupation of the disputed shop with the consent of the landlord immediately before the commencement on U.P. Act No. 28 of 1976 which came into force on 5-7-1976 and that no suit or proceedings for eviction was pending against him before any court or authority on the date of such commencement.

8. As noted above, the order of allotment was passed in favour of Dr. Biswas on 5-9-1975. Against this order the Petitioner filed an appeal and during the pendency of the appeal he moved an application with the following prayer:

It is, therefore, respectfully prayed that the operation of the impugned order dated 5-9-1975 and the allotment order in favour of the Respondent and the proceedings in pursuance thereof for ejectment of the Appellant be stayed during the pendency of the appeal.

In paragraph 5 of this application, the Petitioner asserted that it would be just and proper that the operation of the impugned "order of allotment passed in favour of Dr. Biswas be stayed and the proceedings in pursuance thereof for ejectment of the Appellant be stayed during the pendency of the appeal.

9. Upon this application, the appellate court passed an order on 11th of September, 1975 issuing notice to the Respondents and staying the operation of the order passed by the Rent Control and Eviction Officer meanwhile.

10. From the averments made by the Petitioner in this application it appears that proceedings for ejectment of the Appellant had already been initiated by Dr. Biswas and consequently the Petitioner prayed for stay of those proceedings by means of the aforesaid application. It would thus seem clear that proceedings for ejectment of the Petitioner were actually pending on 5th of July, 1976 as admittedly the stay order continued in operation until the dismissal of the Petitioner's appeal which was on 26th of July, 1976.

11. Learned Counsel for the Petitioner, however, contended that there is no evidence on the record to indicate that any application for execution of the order of allotment passed in his favour on 5th of September, 1975 had been made by Dr. Biswas prior to the grant of the stay in favour of the Petitioner by the appellate court on 11th of September, 1975. Consequently, it cannot be said that any proceeding for eviction of the Petitioner was pending before any court or authority on 5th July 1976. In these circumstances, it was urged, Section 14 would not apply.

12. I find no merit in the above contention. In the first place according to the averments made in the Petitioner's own application for stay referred to above some proceeding for eviction appears to have already been launched by Dr. Biswas before the Petitioner obtained the order of stay on 11th of September, 1975. Secondly, in my view where a person gets the proceedings for the ejectment stayed even before the same are launched, the final result would be the same in so far as the application of Section 14 is concerned.

13. In my view, if a person rushed to the court and gets the proceedings for eviction stayed and as a result thereof the person in whose favour the order of eviction is passed is disabled from getting that occupant evicted on or before 5th of July, 1976, the occupant must be regarded as a person against whom a proceeding for eviction would be deemed to be pending on 5th of July, 1976 for the purposes of Section 14. Such a person cannot stand on a higher plane than a person against whom proceedings for eviction were actually pending on 5th of July, 1976.

14. For, a person cannot take advantage of his own wrong. Having himself stalled the proceedings for eviction the occupant cannot be heard to say that he must be granted the benefit of Section 14 because in actuality no proceedings for eviction were pending against him on 5th of July, 1976.

15. Such a result cannot have been intended by the Legislature. Therefore, a reasonable construction would be that in such circumstances a proceeding for eviction would be deemed to have been pending because the occupant pre-empted those proceedings by his own action.

16. Further, from the Petitioner's own averments in his affidavit filed on 19th of August, 1975 it was clear that he came to occupy the shop in consequence and pursuance of the order of allotment and not under any agreement or with the consent of the landlord.

17. I turn now to the preliminary objection raised on behalf of Dr. Biswas. It was urged that when the Petitioner's writ petition was pending in this Court, U.P. Act No. 28 of 1976 had already come into existence. The Petitioner could therefore have asserted his rights u/s 14 of the Act in that petition itself. However, he did not raise that plea, though he could have raised the same in the writ petition. The writ petition was allowed with a direction to the Rent Control and Eviction Officer to dispose of the various applications for allotment in accordance with the

observations made in that judgment. The order proceeds on the assumption that there was already an existing vacancy in respect of the disputed shop. Implicit in the order passed by this Court was a finding that the disputed accommodation is vacant and available for allotment. The Petitioner was hence barred by constructive res-judicata or principles analogous thereto from contending that there was no vacancy in the eye of law because he was already in occupation of the disputed shop entitled to continue as a lawful occupant thereof in virtue of Section 14. The plea raised by the Petitioner before the courts below u/s 14 was hence legally speaking not available to the Petitioner as he had failed to raise such a plea in the writ petition. He is bound by the order passed by this Court on 30th of November, 1978.

18. Thus in either view of the matter, the petition is liable to be dismissed.

19. In the premise the petition fails and is dismissed with costs. The Petitioner is, however, granted time to vacate the disputed shop by 31st of March, 1983. The Petitioner shall handover vacant possession of the disputed shop to the Respondent No. 3 Dr. Biswas on or before 31st of March, 1983. The Petitioner shall not directly or indirectly induct any other person over the disputed accommodation.