
K.K. Sharma (Sri) Vs Sri Ravindra Nath Garg and Another

Civil Miscellaneous Writ Petition No. 2350 of 2004

Court: Allahabad High Court

Date of Decision: Oct. 1, 2004

Acts Referred:

Constitution of India, 1950 " Article 226#Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 " Section 12(4), 16, 16(1), 16(5), 18#Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 " Rule 8(2)

Citation: (2005) 1 ARC 159 : (2005) 2 AWC 1670

Hon'ble Judges: Anjani Kumar, J

Bench: Single Bench

Advocate: K.K. Arora, for the Appellant; Sunita Agrawal, for the Respondent

Final Decision: Dismissed

Judgement

Anjani Kumar, J.

Heard Counsel appearing on behalf of the parties.

2. Smt. Sunita Agarwal, learned Counsel appearing on behalf of the respondents raised a preliminary objection regarding interference by this Court

at this stage with the order impugned in the present writ petition, which is only an order declaring the vacancy. Smt. Agarwal submitted that in view

of the decision reported in, 2000 (2) ARC 446, Achal Misra v. Rama Shankar Singh, particularly Paragraphs 7 and 8, which are reproduced

below, wherein the Apex Court has held that in similar set of fact a revision against the order declaring the vacancy is maintainable.

7. On examination of provisions of the Act and Rules, we find that Rule 8 (2) of the Rules provides that the inspection report of the Inspector is

required to be pasted on the notice board in the office of the District Magistrate for information of the general public and after the notice is pasted,

a tenant or a landlord has a right to file an objection, and if any objection is filed within three days from the date of pasting of the report, the said

objection is required to be decided by the Rent Controller. It is after the said objection is decided, the vacancy is notified. Under proviso of Sub-

section (1) of Section 16 of the Act, the District Magistrate is further required to give an opportunity to the landlord or the tenant, as the case may,

to show that there is no vacancy as contemplated under Sub-section (4) of Section 12 of the Act. It is only after hearing of such objections, if filed

the District Magistrate can allot the premises. Under Sub-section (5) of Section 16 of the Act, the landlord or the tenant has a further right to file a

review against the order of allotment if such order is not passed in accordance with Clause (a) or Clause (b), as the case may be, of Sub-section

(1) of Section 16. Any person, who is aggrieved against any final order passed u/s 16 of the Act, is entitled to file revision u/s 18 of the Act before

the District Judge on grounds enumerated therein.

8. In view of the aforesaid provisions it cannot be said that the question of vacancy if not challenged by a separate writ petition on its notification,

cannot be questioned in the revision filed u/s 18 of the Act. The question of vacancy pertains to jurisdictional facts and can very well be challenged

in the revision filed against allotment order passed by the District Magistrate. In case it is found that there is not vacancy the order of allotment has

to be set aside. We, therefore, feel that the decision in Ganpat Roy's case holding that the validity of the vacancy cannot be agitated in a revision

u/s 18 of the Act appears to be incorrect. Since the decision in Ganpat Roy's case is by a three Hon"ble Judges, we feel it appropriate that this

appeal be decided by Larger Bench. Let the record of the case be placed before the Hon"ble the CJI for appropriate orders.

3. The aforesaid decision of the Apex Court in fact does not finally decide the controversy as would be clear from Para 8 of the aforesaid

judgment, quoted above. In this view of the matter, this writ petition cannot be dismissed on the submissions made by Smt. Sunita Agarwal.

However, so far as the question of vacancy is concerned is based on findings arrived at by the authority on facts of the case. Nothing has been

brought to the notice of the Court by learned Counsel appearing on behalf of the petitioner that the findings arrived at by the authority suffers from

any error, much less error apparent on the face of record so as to warrant any interference by this Court in exercise of power under Article 226 of

the Constitution of India. This writ petition, therefore, deserves to be dismissed and is hereby dismissed. However, the parties shall bear their own

costs.