

(1982) 10 AHC CK 0070

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 1183 of 1980

Mohan Lal

APPELLANT

Vs

VIth Additional District Judge and
Others

RESPONDENT

Date of Decision: Oct. 5, 1982

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 12(3), 14, 16(1), 18

Hon'ble Judges: K.M. Dayal, J

Bench: Single Bench

Advocate: B.D. Mandhyan, for the Appellant; H.S. Nigam and S.C., for the Respondent

Final Decision: Allowed

Judgement

K.M. Dayal, J.

Heard the learned Counsel for the parties.

2. The present petition has been filed against the judgment and order dated 25th January 1980 passed by VIth Additional District and Sessions Judge, Saharanpur, dismissing the revision filed by the Petitioner against the order of the Rent Control and Eviction Officer dated 20-7-1978 by which he released the godown in question in favour of the landlord u/s 16(1)(b) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act).

3. The Petitioner was admittedly a tenant of the disputed accommodation. An application was made u/s 12(3) of the Act alleging that the building was let out to him for residential purposes and now the Petitioner has got constructed his own house and has shifted to it, therefore, the accommodation in question should be deemed to be vacant.

4. The contention of the learned Counsel for the Petitioner was that the building was always used for business purposes. There was neither any kitchen nor latrine nor electric or water connection. An application was made for inspection of the disputed house. The report of the Inspector is Annexure "II" to the writ petition. From that report it appears that the building was in occupation of the Petitioner since long. There was salt stored in about 3/4th portion of the room. Some of the portion of the house was in ruinous condition and it was being used only for godown purposes at the time of inspection. Thereafter the matter came up before the Rent Control and Eviction Officer for determination of vacancy.

5. From Annexure "III" of the writ petition it appears that the Petitioner filed affidavits of several persons, showing the accommodation as godown. However, by his order (Annexure III) the Magistrate declared that the disputed accommodation was a residential house as it was mentioned a house, "MAKAN". By "Makan" perhaps the Rent Control and Eviction Officer thought that it must be a residential building and not a godown or other type of building. After holding vacancy, the disputed building was released in favour of the landlord u/s 16(1)(b) of the Act. At the time of release the matter was again contested by the Petitioner before the Rent Control and Eviction Officer. However, the house was released in favour of the landlord by Annexure VIII dated 20-7-1978.

6. A revision was filed u/s 18 of the Act before the District Judge, Saharanpur. The matter came up for hearing before the VIth Additional District Judge, Saharanpur, who dismissed the revision. The learned Counsel for the Petitioner has pointed out that before the District Judge the question of vacancy was again raised. It was contended that the question of vacancy was a question of jurisdiction and, therefore, the revisional authority was entitled to go into the matter. But the revisional authority refused to go into the matter. It is surprising that the Revisional Authority did not refer to the report of the Inspector and the documentary evidence on record showing that the building was being used for nonresidential purposes at least since 1964. On the other hand he relied upon the original rent deed and read it as it was let out for residential purposes. The rent deed is Annexure "X" to the writ petition. The purpose of letting has not been mentioned in it. In paragraph 8 it was mentioned that there was a kitchen. Existence of a kitchen in any building will not determine the purpose for which it was let out. Admittedly there was no latrine, bathroom, electric or water connection. Under the circumstances in case the building is found to be used for non-residential purposes since 1964 it could not be said that Section 12(3) could apply to the building. However, I do not think it proper to go into the details at this stage.

7. The learned Counsel for the Respondent argued that the Court below has held that the building was initially let out for residential purposes but subsequently the tenant changed its purpose. The Court below appears to have come to that finding without any evidence on record. No evidence has been pointed out to show that the

landlord ever raised such a question.

8. The learned Counsel for the Petitioner argued that in case there was a deemed vacancy, his possession would be deemed to have been regularised as an authorised tenant u/s 14 of the Act. As the matter is being remanded, I do not think it proper to express any opinion on the same.

9. It is, however, to be seen that if the building was initially let out for residential purposes but on 15th of July 1972 or 5th July 1976 the building was being used for a purpose other than one for which it was let out what would be the effect. Similarly if the vacancy occurred prior to any of the two dates aforesaid and the tenant remained in occupation of the building with the consent of the landlord, whether he can be evicted and if he could be denied the benefit of Section 14 of the Act?

10. The matter may be decided by the Court below on merits including the questions raised in the petition.

11. In the result, the writ petition is allowed. Annexure "IX" is quashed. The Court below is directed to decide the revision in accordance with law and observations made above. The parties are directed to bear their own costs.