

**(2011) 03 AHC CK 0389**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 38966 of 2009

Rajesh Kumar Singh

APPELLANT

Vs

Sri Indrajeet Pratap Shahi and  
Another

RESPONDENT

---

**Date of Decision:** March 8, 2011

**Acts Referred:**

- Limitation Act, 1963 - Section 5
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 16(1), 18, 30
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 8, 8(2)

**Citation:** (2011) 4 ADJ 260

**Hon'ble Judges:** Rakesh Tiwari, J

**Bench:** Single Bench

**Final Decision:** Dismissed

---

**Judgement**

Rakesh Tiwari, J.

Heard counsel for the parties and perused the record.

2. This writ petition arises out of an order dated 6.11.2007 by which vacancy of the shop in dispute situated on the ground floor in premises No. B1/85A, Assi in the City, Varanasi has been declared. The order dated 9.1.2008 allotting the shop in dispute to Respondent No. 1 and consequential order dated 12.2.2008 passed by the Rent Control and Eviction Officer, Varanasi as well as the order of the Revisional Court dated 16.7.2009 have also been challenged. The Petitioner has prayed for quashing of the aforesaid orders and for issuance of a writ of mandamus commanding the Rent Control and Eviction Officer, Varanasi not to evict the Petitioner from the shop in dispute in pursuance of the allotment order dated 19.1.2008 and the consequential order dated 12.2.2008 regarding delivery of possession of the shop in

dispute to Respondent No. 1.

3. Briefly stated the facts of the case are that the Petitioner claims himself to be the tenant of the shop in dispute at the rate of Rs. 300/- per month since life time of his grand father late Hira Lal. The Petitioner is carrying on the business of "Pan" or betel therein under the name and style of "Rajesh Pan Bhandar". The landlord Sri Uma Shankar Pandey is said to be confined to bed due to his illness and as such the rent of the shop in dispute was paid by Smt. Dulari Devi, the mother of the Petitioner to Smt. Lila Devi, wife of the landlord till January, 2007; that Respondent No. 2, Smt. Lila Devi refused to accept the rent after January, 2007 and as such the rent was tendered to her by the mother of the Petitioner Smt. Dulari Devi through money order which also was not accepted by Smt. Lila Devi, hence an application was moved by Smt. Dulari Devi, before the Civil Judge (Junior Division), Varanasi u/s 30 of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent And Eviction) Act, 1972 (hereinafter referred to as the U.P. Act No. 13 of 1972) for grant of permission to deposit the rent of the shop in dispute in the Court.

4. It appears that in the aforesaid circumstances an application was moved by prospective allottee, Sri Indrajeet Pratap Shahi, Advocate u/s 16(1)(b) of U.P. Act No. 13 of 1972 on the prescribed format for declaration of vacancy in the premises in dispute.

5. Subsequently, the Area Rationing Officer submitted his report under Rule 8(2) of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent And Eviction) Rules, 1972 to the effect that he had inspected the shop in dispute on 19.9.2007 in presence of Smt. Lila Devi and Respondent No. 1. In his report he has stated that he has found the shop in dispute was lying closed and the Petitioner was not present on the spot. He recorded the statement of Smt. Lila Devi in presence of two witnesses of the locality namely, Sri B.N. Verma and Sri Shiv Nath to the effect that the shop in dispute was let out to the Petitioner on 1.8.2001 for a period of 11 months for a tailoring business and not for business of "Pan" or betel to Rajesh; and that he is not paying the rent w.e.f. January, 2002.

6. The Petitioner put in appearance before the Rent Control and Eviction Officer and engaged Sri Ajay Kumar Srivastava, Advocate of practicing in Civil Court, Varanasi to represent him. The said Advocate did not pursue the case as such the Rent Control and Eviction Officer vide order dated 6.11.2007 declared vacancy of the shop in dispute and by subsequent order dated 19.1.2008 allotted it in favour of Respondent No. 1. He also issued Form-C on 12.2.2008 for delivery of possession of the shop in dispute to him.

7. Aggrieved by the order aforesaid, the Petitioner filed Civil Misc. Writ Petition No. 12348 of 2008, Rajesh Kumar Singh v. Rent Control and Eviction Officer, Varanasi. The High Court vide its order dated 4.3.2008 issued notices to Respondent Nos. 1 and 2 staying the eviction of the Petitioner from the shop in dispute. However, that

writ petition was dismissed by judgment and order dated 19.9.2008 on the ground of alternative remedy of filing revision u/s 18 of the Act against the impugned order is available to the Petitioner.

8. Pursuant thereto the Petitioner preferred Rent Revision No. 1 of 2009, Rajesh Kumar Singh v. Indrajeet Pratap Shahi, Advocate and Ors., alongwith an application u/s 5 of the Indian Limitation Act before the District Judge, Varanasi. Some amendments also appear to have been made in the memo of revision with permission of the Court on 25.5.2009. The aforesaid revision was then finally heard and dismissed by the Additional District Judge, Court No. 3 Varanasi vide judgment and order dated 16.7.2009 holding that-

9. The contention of learned Counsel for the Petitioner firstly is that mandatory provisions of Rule 8(2) of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent And Eviction ) Rules, 1972 were not complied with and secondly that the Petitioner has been denied a reasonable opportunity of hearing by the Rent Control and Eviction Officer as such the orders passed by him and subsequent orders against the Petitioners are illegal, contrary to law and are liable to be quashed.

10. Per contra, learned Counsel for the Respondents has submitted that admittedly the shop in dispute was given on rent to the Petitioner for a period of 11 months and he has not paid the rent of the shop in dispute since January, 2002. So far as Rule 8(2) of the Rules, 1972 is concerned, he submits that the rule provides that Rent Control Inspector shall as far as possible, make inspection of the building in presence of the landlord and the tenant and shall also take their statements in presence of two witnesses of the locality. It is stated that the Revisional Court after perusal of record has come to the conclusion that as the Petitioner was not present on the spot, when inspection of the building was conducted by the Rent Control Inspector and the statement of Smt. Lila Devi who was present their was recorded in presence of two witnesses of the locality and therefore, there was sufficient compliance of Rule 8(2) of the Rules aforesaid. As regards denial of opportunity of hearing to the Petitioner, it is found as matter of fact that Petitioner had appeared through his Advocate in the case before the Rent Control and Eviction Officer after the inspection by the Inspector under Rule 8 but did not pursue the case as such it cannot be said that the authority has denied any opportunity of hearing to him. The Petitioner in the circumstance, cannot take advantage of his own folly.

11. After hearing learned Counsel for the parties and on perusal of record it is apparent that there is no procedural irregularity as the Rent Control and Eviction Officer had issued notice to the Petitioner for hearing which he did not avail. The spot inspection was made after substantial compliance of Rule 8(2) of the Rules and since the Petitioner was not present on the spot his statement could not be recorded for which the authorities below cannot be blamed. In so far as denial of principle of natural justice is concerned, it is apparent from the record that the Petitioner had appeared before the Rent Control and Eviction Officer and filed

Vakalatnama of Sri Ajay Kumar Srivastava, Advocate as his counsel. If the Petitioner and his counsel had not appeared thereafter, the Court cannot be blamed for proceeding ex parte or for non-compliance of principles of natural justice. In the aforesaid circumstances, the authority rightly ordered for proceeding ex parte in the case and after declaration of vacancy has allotted the shop in dispute to Respondent No. 1. The two contentions raised by the learned Counsel for the Petitioner in these set of admitted facts and circumstances have no force. The tenancy of the Petitioner was only for a period of 11 months he has also not paid the rent/compensation to the landlord after January, 2002 for use and occupation of the shop. Therefore, he has no right to continue in possession of the accommodation in dispute.

12. For all the reasons stated above, the writ petition is dismissed. No order as to costs.