

(2009) 10 AHC CK 0228**Allahabad High Court****Case No:** None

Bengali Prasad Verma

APPELLANT

Vs

Addl. District and Sessions Judge,
Court No. 9 and Others

RESPONDENT

Date of Decision: Oct. 30, 2009**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21(1)(b)

Citation: (2010) 1 AWC 673**Hon'ble Judges:** Shishir Kumar, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Shishir Kumar, J.

Present writ petition has been filed for quashing the order dated 27.4.2009 (Annexure-28 of the writ petition) and order dated 21.4.2001 (Annexure-21 to writ petition).

2. The facts arising out of writ petition are that an application was filed on 9.1.1979 u/s 21(1)(b) of U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 by one Sri Pratap Narain Jaiswal against occupants Sri Radha Kishan and Sri Mushtaq Ahmad for releasing of the said accommodation before the prescribed authority. A compromise was entered on the same day between the parties and according to the terms and condition of compromise deed, it was stipulated that after the construction is made, tenant will be given a shop. The said premises according to agreement was demolished and reconstructed in the year 1985. During the period of construction, respondents moved an application before prescribed authority for payment of compensation from the landlord due to delay in

construction in accordance with the condition of compromise. They were not satisfied of the order passed by court below, as such, a writ petition was filed as Writ Petition No. 7064 of 1981, Radha Kishan and Anr. v. Pratap Narain and Anr., for quashing the order dated 1.4.1981. An application was moved in the year 1985 by Sri Radha Kishan and Shri Mushtaq Ahmad for restoring them back in possession. During pendency of writ petition, an application dated 14.8.1986 was filed for restoring the possession to them. An application for allotment u/s 24(2) of Act No. 13 of 1972 was also moved. Shri Radha Kishan expired on 24.4.1989 while Shri Mushtaq Ahmad expired on 22.5.1995. No substitution application was filed substituting the heirs of these two persons. An objection was taken to the application dated 14.8.1986. An order dated 5.7.1988 was passed in which a finding has been recorded that building has been constructed in the month of May, 1986. No application for substitution was filed. It was on 4.8.1995, an application was filed and it was allowed. An order was passed on 3.2.1999 to give possession to heirs of Sri Radha Kishan and Sri Mushtaq Ahmad. It is to be noted that aforesaid premises was sold in favour of petitioner in the year 1998.

3. It has been stated that material facts have been concealed by heirs of both the persons regarding an alternative accommodation located adjacent to the premises in dispute as they were running a big shop. Petitioner coming to know regarding aforesaid orders, as he was dispossessed, a recall application was filed recalling the order dated 3.2.1999 and this Hon'ble Court passed a detailed order acknowledging the fact that earlier order was passed in some misconception. In the order dated 13.7.1999, this Court was pleased to permit the heirs of Sri Radha Kishan and Sri Mushtaq Ahmad to move an application for allotment explaining the delay, if any, and therefore, second application was moved by heirs of Shri Mushtaq Ahmad and Sri Radha Kishan. An application for allotment moved by respondents was supported by delay condonation application. The same was allowed on 21.4.2001, treating that the Hon'ble Court in its order dated 13.7.1999 has held that delay is condoned. A revision was filed against the said order that was allowed setting aside the order dated 24.1.2001. Respondents filed a writ petition, same was allowed by this Court on 30.11.2004 and matter was remanded to revisional court and on the basis of remand, revisional court decided the same against petitioner vide its order dated 27.4.2009, hence the present writ petition has been filed.

4. Sri Arvind Srivastava, learned Counsel appearing for petitioner submits that this Court on 3.2.1999 was pleased to pass the following orders:

Seen the office report dated 11.1.1999.

The notices were sent to respondent No. 1 by registered post. The undelivered cover has not been received back. The notices shall be deemed to have been served under Explanation II to Rule 12 of Chapter VIII of the Rules of the Court.

This Court has directed respondent No. 1 to appear in person. This Court also directed him to put the petitioner back in possession of the shop in question. The Superintendent of Police, Deoria is hereby directed to put the petitioner back in possession over shop in question within one week from the date of production of a certified copy of this order alongwith true copy of this writ petition which is in possession of respondent No. 1 and submit a report to this Court after the possession is delivered to the petitioner.

The Registry shall send a copy of this order to the Superintendent of Police, Deoria within one week from today.

Further the notices be issued to respondent No. 1 to show-cause as to why contempt proceedings be not drawn against him for flouting the aforesaid orders of the Court dated 14.10.1998 and 9.12.1998.

Sd. Hon. Sudhir Narain, J.

5. After this order, possession was given. It has further been submitted by learned Counsel for petitioner that admittedly no substitution application has been filed, therefore, earlier proceeding making application by father of respondent stood awaited, therefore, if this Court permits to make another application however, delay in making this application has to be explained. The inference taken by the court below that there is nothing to be decided regarding condonation of delay, a finding to this effect is misconceived. The learned Counsel for petitioner submits that court below has misinterpreted the order dated 13.7.1999 by which Writ Petition No. 7064 of 1981 was disposed of giving liberty to petitioner to make an application under Sub-section (2) of Section 24 of the Act. The operative portion of the order is being quoted below:

The petitioners, however, were to file an application for allotment under Sub-section (2) of Section 24 of the Act. The petitioners have died. It is necessary for their heirs to file an application for allotment u/s 24(2) of the Act and if so advised, with an application to condone the delay in filing the application. In case they do not file any application or no allotment order is passed in their favour, they will be liable to re-deliver the possession of the shops. In case they file an application for allotment within three weeks from today, the District Magistrate shall pass an appropriate order keeping in view the observations made above and in accordance with law within two months.

The application is accordingly disposed of.

6. The intention of Court is very clear that they have to make an application for condonation of delay and an application was filed within three weeks then it was obligatory on the part of the District Magistrate to decide the same on merits taking into consideration whether application was filed within time or not. Further learned Counsel for petitioner submits that Court itself has ordered in the said judgment

that order of delivery of possession was passed on 14.10.1999 under misapprehension. In such situation, learned Counsel for petitioner submits that finding to this by the revisional court that High Court has directed to condone the delay and the matter be decided on merits, is not correct and that is a misrepresentation by the court below.

7. The contention of Sri Srivastava to this effect that as earlier writ petition has been dismissed, therefore, any order passed in the writ petition cannot be taken into consideration. It is clear from record that this Court had directed to entertain the application on merits in accordance with law, therefore, inferring by the order of revisional court that delay has been condoned, is not correct.

8. On the other hand, Sri T.P. Singh, learned senior advocate has submitted that each and every issue raised by petitioner has already been concluded by two judgments of this Court. Firstly, Writ Petition No. 7064 of 1981, decided on 13.7.1999 by which this Court has granted permission to answering respondent to move an application u/s 20(4) within a period of three weeks. A finding in this case has also been recorded that admittedly, no inference was ever given to the landlord regarding completion of the accommodation. This Court has recorded a finding that Section 5 of Limitation Act is applicable to the proceeding under the Act. Section 35 of the Act provides that provisions of Sections 4, 5 and 12 of the Act shall mutatis mutandis be available to the proceeding under the Act. A finding to that effect has also been recorded that the tenant cannot apply for allotment u/s 24(2) of the Act before the District Magistrate unless and until the landlord gives a notice to him regarding the date of completion of construction. Sri T.P. Singh learned senior advocate has submitted as this Court in Writ Petition No. 36584 of 2009 filed by respondent-tenant a detailed judgment was given by this Court and the writ petition was allowed and the matter was remanded back to revisional court to be decided in the light of the observation made above. This Court on 13th July, 1999 was pleased to pass the following orders:

The applicant (Bengali Prasad Verma) has not stated anywhere the date on which the construction of the building was complete. The date of completion of the construction of the building has to be determined as given in Explanation (a) of Sub-section (2) of the Section 2 of the Act, which provides that the construction of the building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and in the case of a building subject to assessment, the date on which first assessment thereof comes into effect....

9. After the order dated 13th July, 1999, passed in the earlier writ petition, a review application was filed by petitioner that was dismissed by this Court. In the earlier judgment a finding has been recorded that the condonation of delay was only a mere formality particularly in view of the order passed by this Court on 13th July, 1999 coupled with the fact that review application for review of the order dated 13th

July, 1999 has already been rejected by this Court. Further submission was that interference u/s 18 of the Act is limited and relying upon the judgment of this Court, this Court has quashed the revisional order and remanded the matter to the revisional court recording a finding that once delay in filing the application has already been condoned and this Court has permitted, now there is no option excepting the District Magistrate to decide it on merits. Learned Counsel for respondents has placed reliance upon a judgment of this Court in Deo Narayan Jaiswal v. Special Judge (E.C. Act) and Ors. 2008 (6) ADJ 698, and reliance has been placed upon paras 22 to 25 of the said judgment. The same are being quoted below:

22. In the present case we are concerned with the benefit of Section 20(4) of the Act which provides for unconditional deposit of entire arrears of rent and damages with interest @ 9% per month and costs of the suit to avoid a decree of eviction and to relieve the tenant against his liability of eviction on the ground of default. Sub-section (5) of Section 20 provides as follows:

20 (5) Nothing in this section shall affect the power of the Court to pass a decree on the basis of an agreement, compromise or satisfaction recorded under Rule 3 of Order XXIII of the First Schedule to the Code of Civil Procedure, 1908.

23. In this case the landlord in lieu of the permission given by the tenant and with a condition of increase of rent, allowed tenant to continue to have same rights as he would have otherwise got with his old tenancy under the Act. In Lachoo Mal's case it was held that such a contract would not violate any policy much less public policy for holding that the agreement was void u/s 23 of the Indian Contract Act. The agreement as such was a valid agreement.

24. The landlord has drawn benefits under the compromise. He cannot be permitted now to dispossess the tenant except at any of the grounds given under the U.P. Act No. 13 of 1972. With the compromise in Suit No. 83 of 1977 between the parties the landlord got benefit of reconstruction of the shop and also added first floor for his own residence. He also got benefit of increase of rent from Rs. 10.49 to Rs. 375 per month. The landlord is therefore estopped for alleging that the terms of the same agreement would not benefit the tenant. The principle of estoppel serve equity, justice and good conscience. Having taken benefit under the compromise the landlord is estopped from alleging that the agreement is void, and would not give the tenant the protection of the Act to the extent.

25. The writ petition is dismissed.

10. I have considered the submissions made on behalf of parties and have perused the record. This Court in earlier writ petition, i.e., Civil Misc. Writ Petition No. 7064 of 1981 has already passed the following orders:

The petitioners, however were to file an application for allotment under Sub-section (2) of Section 24 of the Act. The petitioners have died. It is necessary for their heirs

to file an application for allotment u/s 24(2) of the Act and if so advised, with an application to condone the delay in filing the application. In case they do not file any application or no allotment order is passed in their favour, they will be liable to redeliver the possession of the shops. In case they file an application for allotment within three weeks from today, the District Magistrate shall pass an appropriate order keeping in view the observations made above and in accordance with law within two months.

The application is accordingly disposed of.

11. The landlord aggrieved by aforesaid order, filed a review application that was dismissed by this Court. During the pendency of aforesaid review application, tenant has filed an application for allotment as directed by this Court alongwith an application for condonation of delay. When the question regarding maintainability of allotment application, particularly in view of the fact that there was an application and application filed in pursuance of direction issued by this Court will be termed as a second application and its maintainability is dealt with and this Court has held as under:

Firstly, there is no bar in filing the second application when the first application has not been disposed of. Admittedly, the first application has not been disposed of and no order has been passed till today as the Magistrate has kept the proceedings in abeyance during the pendency of the writ petition.

Secondly, the petitioners have died and the heirs are entitled to file another application u/s 24(2) of the Act.

It is contended that the heirs have no right to file an application u/s 24(2) of the Act and secondly the heirs can file an application for substitution as provided under Rule 25 of the Rules framed under the Act before the prescribed authority within 30 days from the date of death of the party concerned.

It is settled law of this Court that period prescribed for filing application for substitution under Rule 25 is directory and not mandatory. Secondly, the proceedings remained suspended and in these file an application for substitution which is alleged to be pending or file an application u/s 24(2) of the Act. Thirdly, it may be noted that the District Magistrate has power to condone the delay, if any, in filing the application u/s 24(2) of the Act. The learned Counsel for the petitioners then urged that the building was demolished on the basis of the compromise and if such building is demolished under a private agreement, the provision of Section 24(2) is not applicable. He has placed reliance upon decision in the case of *Ram Dularey Gupta v. State of U.P. and Ors.* 1981 ARC 47. This decision is not applicable to the present case. The parties had entered into compromise in the proceedings u/s 21(1) (b) of the Act and the prescribed authority has passed the order under the said provision. As the building was demolished under the orders passed by the prescribed authority the provision of Section 24(2) is applicable.

12. In Writ Petition No. 38758 of 2003, a controversy was raised and it was contended that after the order dated 13th July, 1999 was passed by this Court, the tenants (their heirs) have filed an application u/s 24(2) of the Act. The matter was placed before the District Judge but transferred to the Up-Zila Adhikari, Sadar, Deoria, who allowed the application for condonation of delay in filing the allotment application vide its order dated 21st April, 2001. Aggrieved by the aforesaid order, Bangali Prasad Verma filed a revision. Revision was allowed and the order was set aside and it was held that tenants are not entitled for benefit u/s 5 of the Limitation Act, which relates to condonation of delay in filing the application u/s 24, Sub-clause (2) of the Act.

13. In writ petition filed by respondents, it was contended by petitioner in that writ petition that condonation of delay was only a mere formality in view of the order dated 13th July, 1999 coupled with the fact that review application was also dismissed by this Court. Scope of Section 18 of the Act is very limited as it would be clear from bare perusal of the Section 18 of the Act. Section 18 is being quoted below:

18. Appeal against order of allotment or release.--(1) No appeal shall lie from any order u/s 16 or Section 19, whether made before or after the commencement of this section, but any person aggrieved by a final order under any of the said sections may, within fifteen days from the date of such order, prefer a revision to the District Judge on any one or more of the following grounds, namely:

- (a) that the District Magistrate has exercised a jurisdiction not vested in him by law;
- (b) that the District Magistrate has failed to exercise jurisdiction vested in him by law;
- (c) that the District Magistrate acted in the exercise of his jurisdiction illegally or within material irregularity.

(2) The revising authority may confirm or rescind the final order made under Sub-section (1) or may remand the case to the District Magistrate for rehearing, and pending the revision, may stay the operation of such order on such terms, if any, as it thinks fit.

Explanation.--The power to rescind the final order under this sub-section shall not include the power to pass an allotment order or to direct the passing of an allotment order in favour of a person different from the allottee mentioned in the order under revision.

(3) Where an order u/s 16 or Section 19 is rescinded, the District Magistrate shall, on an application being made to him on that behalf, place the parties back in the position which they would have occupied but for such order or such part thereof as has been rescinded, and may for that purpose use or cause to be used such force as may be necessary.

14. It was also argued and held that in view of the Apex Court judgment, delay once condoned by the competent authority, the revisional court was not justified in interfering with the order of condonation of delay while exercising power u/s 18 of the Act. The Apex Court has observed that when there is a reasonable ground to think that delay was occasioned by the party not deliberately and it is established that it was found satisfactory by the trial court, then revisional court or the High Court should not interfere in upsetting the finding. In that circumstances, the writ petition was allowed and matter was remanded back to revisional court. Further during pendency of revision, it appears that petitioner has again approached this Court by filing a Writ Petition No. 64275 of 2008 which was disposed of on 15.12.2008 with certain observations:

In such circumstances, the contention of Sri Srivastava cannot be accepted that the orders passed in earlier writ petition, as writ petition has already been dismissed, therefore, any order during pendency of writ petition passed cannot be taken into consideration and that will be treated to be a non est order. It is clear from the record that this Court has directed to entertain the application on merits in accordance with law, therefore, this Court has given a jurisdiction to Rent Control and Eviction Officer to entertain the application and on that basis revision was filed by petitioner. This Court has allowed the writ petition and matter has been remanded back to revisional authority for consideration on merits. Even on the basis of interim order in 1981 writ petition, the respondents-tenants were put in possession of shop in dispute and they were still in possession. Therefore, it cannot be said that orders during pendency of writ petition can be treated to be an order without jurisdiction in case the writ petition is dismissed and no relief was sought.

Apart from entering into aforesaid controversy as the revision on the basis of remand order passed by this Court is still pending, therefore, in the interest of justice it will be appropriate that revisional court may decide the revision after hearing both the parties taking into consideration the fact regarding maintainability of second application for allotment and will pass a reasoned order in accordance with law within a period of two months from the date of production of certified copy of this order.

15. Now the writ petition has been decided holding therein that filing second application cannot be treated to be beyond time. Further, the High Court has held that there are two options to the tenants to make an application for substitution in the earlier application u/s 24(2) or to make a fresh application. Further, this Court has already directed to make an application within three weeks, therefore, there is no occasion to treat the application beyond time. Now it has to be decided on merits.

16. In State of Punjab Vs. Mst. Qaisar Jehan Begum and Another, the Apex Court has held that the limitation for filing application for reference u/s 18 of the Limitation Act starts only from the date when award is either communicated to the party or its

own by him either actual or constructively. If the award was never communicated to the party and such party may have knowledge of the award but not the contents of the award still it will not be taken that he had knowledge of the award so as to file application for reference u/s 18 of the Act. The building may be constructed by a landlord after demolition but the tenant may not know when it was completed.

17. In view of aforesaid fact and in view of findings recorded in two earlier writ petitions, now there is no scope to accept the contention of petitioner.

18. The writ petition is devoid of merits and is hereby dismissed without imposing any cost.