courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 05/11/2025

(1993) 1 AWC 45

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 4468 of 1990

Ram Autar	APPELLANT
Vs	
9th Additional District Judge and Others	RESPONDENT

Date of Decision: Aug. 25, 1992

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 13, 16
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 - Rule 10, 10(5)

Citation: (1993) 1 AWC 45

Hon'ble Judges: S.P. Srivastava, J

Bench: Single Bench

Advocate: J.C. Bhardwaj, for the Appellant; H.N. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

S.P. Srivastava, J.
The Petitioner''s father Narain Prasad was a tenant of the accommodation in dispute However, he was evicted therefrom on 24-11-80 in the proceedings u/s 16 of the U.P. Act No. 13 of 1972 after holding the aforesaid accommodation to be vacant and releasing the same in favour of the landlord-Respondent No. 3.

2. It appears that subsequent to the release the landlord instead of utilizing the said premises for the purpose for which it was got released let out the same to Kailash Chandra, Respondent No. 4 some where in the year 1983. On 18.03.85, the Petitioner moved an application seeing allotment of the aforesaid premises in his favour on the ground that the said accommodation having been allowed to be occupied by Respondent No. 4 in contravention of the provisions of the U.P. Act No. 10 of 1972 would be deemed

to be vacant and available for allotment, as the status of Kailash Chandra referred to above was that of an unauthorized occupant as envisaged u/s 13 of the said Act. Another application for allotment of the premises in dispute was filed by Respondent No. 4 who was occupying the premises and running his business therein as stated above.

3. The Rent Control and Eviction Officer after considering the evidence and materials on record found the status of the Respondent No. 4 to be that of an unauthorized occupant and held that the premises in dispute was available for allotment. However, taking into consideration the fact that Narain Prasad the predecessor-in-interest of the present Petitioner had been evicted from the premises in dispute for violating the provisions contained in the Act and further that the Petitioner was not prosecuting his application for allotment as he was persistently remaining absent and was not coring to appear on the various dates fixed in the case in spite of information and further that the portion in dispute had been let out to Kailash Chandra by the Landlord who had been earring on business, therein for the past three years passed an order allotting the said premises in favour of Respondent No. 4. The Rent Control and Eviction Officer found that the Respondent No. 4 was a fit person for such an allotment.

4. Aggrieved by the aforesaid order, the Petitioner preferred a revision before the Respondent No. 1 which was dismissed vide the order dated 27-11-89 affirming the findings recorded by the Rent Control and Eviction Officer. The Petitioner has now approached this Court by means of the present writ petition seeking the quashing of both the orders passed by the Respondents No. 2 and 1 dated 28-2-87 and 27-11-1989 respectively.

5. In the present case as is apparent from the record there is no dispute regarding the premises in question being vacant and available for allotment In the facts and circumstances of the case the Rent Control and Eviction Officer has preferred to allot the premises in dispute to Respondent No. 4. This preference has been found by the revision authority to be proper and in accordance with law.

6. I have heard Sri. J.C. Bhardwaj, learned Counsel for the Petitioner and Sri. H.N. Sharma, learned Counsel appearing for the contesting Respondent and have perused the record.

7. Learned Counsel for the Petitioner has urged that once the status of Respondent No. 4 has been determined to be that of an unauthorized occupant, the Rent Control and Eviction Officer had no jurisdiction to allot the premises in question in his favour. He has placed reliance in this connection on Rule 10 of the Rules framed under the U.P. Act No. 13 of 1972 and has asserted that Rule 10(5)(d) of the Rules contained a prohibition and forbids allotment of a building for accommodating a person who has entered into unauthorized occupation of the same. Learned Counsel for the Respondent has however, urged that the aforesaid rule does not contain any absolute prohibition and in the facts and circumstances of the present case, the requisite condition contemplated under Rule

10(5)(d) being absent even the said prohibition cannot be deemed to be operative and applicable in the present case.

8. The word "ordinarily" can have different shades of meaning. This expression has not been used in Rule 10(5) of the Rules framed under the U.P. Act No. 13 of 1972 with reference to a case to which there can be no exception. It should not be taken to mean invariably" or "always". It leave sufficient margin of discretion with the appropriate authority and gives a certain amount of elasticity to the rule. In a case where the needs of the prospective allot tee are found to be equal the balance should, however, be not titled in favour of the persons who fall in the category of persons specified in the rule. The Rent Control and Eviction Officer is free to exercise a discretion in the matter of allotment after considering the equities in the case and the undue hardships, if any, which may be caused to a prospective allot tee depending upon the circumstances and the exigencies of the case, and of course for adequate and exceptional reasons. The Rent Control and Eviction Officer is not bound to refuse allotment in all cases and continues to possess the jurisdiction to allot the premises even to a person who has entered into unauthorized occupation of the same, if there are such circumstances which may justify such an allotment as indicated above.

9. In the present case, it was never disputed that the Respondent No. 4 had been in the occupation of the premises for the past three years. It further appears that the landlord had himself let out the premises in dispute to the Respondent No. 4 and in the absence of any pleading or proof about there being no written consent of the landlord as referred to in the Rule 10(5)(d) of the Rules and further in view of the fact that the Petitioner was found by the Rent Control and Eviction Officer to be disinterested in the allotment on account of his persistent failure to appear before the authority concerned inspire of notice, the discretion exercised by the said authority in allotting the accommodation in dispute in favour of the Respondent No. 4 cannot be deemed to be vitiated by any such error of jurisdiction which required interference by the revisional authority. Further it cannot be overlooked that the safeguard envisaged under Rule 10(5)(d) about written consent is for the benefit of the landlord and for protecting his interest. In the present case, the landlord appears to have waived that benefit.

10. I do not find any such error much less manifest error in the impugned orders which may justify any interference by this Court in the exercise of the extraordinary jurisdiction envisaged under Article 226 of the Constitution of India.

11. The writ petition is accordingly dismissed, without there being any order as to costs.