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Smt. Madhur Lata alias Madhu Lata Vs Addl. District Judge (Uttarakhand Case) and Another

C.M.W.P. No. 16786 of 1997

Court: Allahabad High Court

Date of Decision: May 14, 1997

Acts Referred:
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 â€" Section 15(1), 16, 16(1), 17(2)#Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 â€" Rule 10, 11, 9, 9(3)

Hon'ble Judges: Sudhir Narain, J

Bench: Single Bench

Advocate: K.K. Arora, for the Appellant;

Final Decision: Dismissed

Judgement

Sudhir Narain, J.
This writ petition is directed against the order dated 30.4.1997, allowing Revision No. 18 of 1992, setting aside the

allotment order passed in favour of the Petitioner and remanding the matter to the Rent Control and Eviction Officer for considering the allotment

applications afresh.

2. The dispute relates to a residential accommodation, i.e., first floor of premises No. 76C, Nashvilla Road, Dehradun. Respondent No. 2 is its

owner and residing in this house. This accommodation was originally occupied by one Smt. Kanta Sharma. The landlord-Respondent filed

application for release on the allegation that Smt. Kanta Sharma has vacated it and passed on its possession to one Ashok Kumar. The

accommodation should be treated as vacant. He needs it bona fide and be released in his favour. A notice was issued to Smt. Kanta Sharma. She

filed objection alleging that she never vacated the disputed accommodation and it is not vacant. The Rent Control and Eviction Officer passed an

order on 30.1.1992 declaring the disputed accommodation as vacant on the finding that Smt. Kanta Sharma had vacated the accommodation. The

Petitioner after declaration of vacancy filed an application for its allotment. The Rent Control and Eviction Officer rejected the release application

filed by the landlord on 13.2.1992 and by the same order allotted the accommodation in favour of the Petitioner. Respondent No. 2 filed Revision

No. 18 of 1982 against allotment order passed in favour of the Petitioner and Revision No. 19 of 1992 against the order rejecting his release

application. Respondent No. 1 dismissed Revision No. 19 of 1992 upholding the order of the Rent Control and Eviction Officer rejecting the

release application. This order is not under challenge in the present writ petition. Respondent No. 1 allowed Revision No. 18 of 1992 setting aside

the allotment order in favour of the Petitioner and remanding the matter to the Rent Control and Eviction Officer for considering the allotment

application afresh after giving opportunity of hearing to the landlord-Respondent No. 2.

3. Respondent No. 1 took the view that the allotment order cannot be passed on the day, the order rejecting the application of the landlord for

release of the disputed premises is passed inasmuch as the landlord is entitled to raise objection in respect of the allotment application only when he

comes to know that his release application has been rejected.

4. Sri K. K. Arora, learned Counsel for the Petitioner contended that under law, it is not required that the Rent Control and Eviction Officer should

fix a different date for hearing of allotment applications in case the release application of landlord is rejected on the same date. It is necessary to

refer to Rule 9(3) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (hereinafter referred to as the Rules) which reads

as under:

9 (3) Immediately after the receipt of intimation of vacancy of any building in the office of the District Magistrate, the vacancy shall be entered in a

register which shall be maintained in that behalf and be notified for the information of the general public by pasting a copy of the list of the vacant

buildings on the notice board of that office, specifying therein the date on which the question of allotment will be considered. He shall also issue a

notice to the landlord intimating him the date so fixed. On the date so fixed, the District Magistrate shall consider the case of all applicants

registered In the register mentioned in Rule 10 and shall pass an order u/s 16 in accordance with Rules 10 and 11.

5. The aforesaid Rule contemplates that the landlord shall be intimated about the date fixed for hearing of the allotment application. In case the

landlord has filed application for release of the accommodation in question u/s 16(1)(b) of U.P. Urban Buildings (Regulation of Letting, Rent and

Eviction) Act, 1972 (In short the Act), the allotment applications cannot be considered unless the application for release filed by the landlord is

decided. The prospective allottee is not entitled to contest the release application as held in Full Bench case of Talib Hasan and Anr. v. First

Additional District Judge, Nainital and Ors. 1986 (1) ARC 1. The prospective allottee comes into picture only after rejection of landlord''s

application for release. The view of the Full Bench has been upheld by the Hon''ble Supreme Court In Vijai Kumar Sonkar v. Incharge District

Judge and Ors. 1995 (2) ARC 1. The Rent Control and Eviction Officer has fixed the date for considering the release application and on the date

so fixed, the Rent Control and Eviction Officer has to consider the merits of the release application. In case the application for release is rejected,

he is to fix a date for hearing of the allotment application. Rule 9(3) of the Rules framed under the Act contemplates a date of hearing of the

allotment applications. The landlord can submit his objection on the date of hearing of allotment applications. It may be that the landlord might have

filed objection against the allotment application but even in that case, it is only after the rejection of the release application the objection in regard to

the allotment application has to be considered on a date which may be fixed by the Rent Control and Eviction Officer for consideration of the

allotment applications. There must be a time gap between the date of hearing of the application for release and the date of hearing on applications

for allotment of the premises in question. The Rent Control and Eviction Officer after having rejected the release application should have fixed

another date for hearing the allotment applications.

6. Learned Counsel for the Petitioner has placed reliance upon the decision Vishwa Nath v. IVth Additional District Judge, Etawah and Ors. 1984

(1) ARC 459, wherein the landlord was contesting the matter regarding the vacancy. In paragraph 4 of this judgment, it was observed that

landlord was participating in the allotment proceedings, he cannot complain that there was any violation of Rule 9 of the Rules. In this case, the

landlord had not filed any application for release of the disputed premises. The sole question was whether the disputed premises was vacant.

7. In Brij Mohan Sharma and Anr. v. District Judge, Pauri Garhwal and Ors. 1979 ARC 308, the landlord contended that the accommodation

should be allotted to his nominee and he is entitled to nominate u/s 17(2) of the Act. His contention was repelled by the revising authority. On writ

petition being filed, one of the arguments was raised that Rule 9 (3) was not observed by the Rent Control and Eviction Officer. The District Judge

had taken the view that Rule 9 (3) was applicable only when intimation of vacancy was given by the landlord as provided u/s 15(1) of the Act. This

Court did not express any view in the matter but held that as the Petitioner was not prejudiced on account of non-intimation of the date fixed for

hearing of the case, he cannot complain of noncompliance of Rule 9 (3) of the Rules.

8. Sri Arora, learned Counsel for the Petitioner contended that the release application was rejected on 13th February, 1992 and the allotment

order was also passed on the same day, the landlord cannot be said to have been prejudiced as he was aware of the date fixed for hearing of both

the matters. As observed above, the Rent Control and Eviction Officer should have fixed date for consideration of allotment applications other than

the date fixed for hearing the release application inasmuch as two matters are entirely different and the allotment applications can be considered

only after the application for release filed by the landlord is rejected.

9. The second submission of learned Counsel for the Petitioner is that the landlord Is claiming that the accommodation should be allotted to his

nominee. Placing reliance upon Section 17(2) of the Act, it is contended that the landlord was not entitled to nominate any person unless he has

intimated the vacancy to the District Magistrate, in accordance with the provisions of Section 15(1) of the Act. The landlord had filed release

application in the year 1986 on the ground that Smt. Kanti Sharma had illegally passed on possession to another person. Smt. Kanti Sharma filed

objection that she had not vacated the accommodation. The Rent Control and Eviction Officer passed order on 30.1.1992 declaring the

accommodation in question as vacant after taking into consideration the objections of the Petitioner. Admittedly, the tenant had not intimated the

vacancy either to the landlord or to the District Magistrate. In Irshad Ahmad v. VIIth Additional District Judge, Aligarh and Ors. 1994 (2) ARC

37, it was held that in case the tenant has not intimated the vacancy to the landlord or a question arises as to whether there is deemed vacancy, the

requirement of intimation within seven days from the date of vacancy cannot be applied as the date of vacancy is not fixed. In case, however, the

landlord is residing in a portion of the house a part of which has fallen vacant. Section 15(1) of the Act is not applicable. The factual aspects have

yet to be examined by the Rent Control and Eviction Officer.

10. The last submission of learned Counsel for the Petitioner is that the observation of Respondent No. 1 that the Petitioner is in unauthorised

occupation is erroneous without considering the material evidence on record. A perusal of the order of Respondent No. 1 indicates that Smt. Kanti

Sharma had passed on possession of the disputed premises to Asnok Kumar. The question is as to whether the Petitioner is same Ashok Kumar

to whom the possession has been transferred by the outgoing tenant. The matter has been remanded to the Rent Control and Eviction Officer and

if the Petitioner satisfies that he is not the person to whom the possession was transferred, the Rent Control and Eviction Officer can examine the

matter.

11. In view of the above discussions, the writ petition is dismissed.