

(2007) 05 AHC CK 0370

Allahabad High Court

Case No: C.M.W.P. No. 42912 of 2001

Ghanshyam Das

APPELLANT

Vs

Asha Devi and Another

RESPONDENT

Date of Decision: May 22, 2007**Acts Referred:**

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 14, 16(1), 20(2), 25(2)
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Amendment Act, 1976 - Section 2A

Citation: (2007) 6 AWC 5846**Hon'ble Judges:** Prakash Krishna, J**Bench:** Single Bench**Advocate:** S.N. Mishra and Rama Goel, for the Appellant; Prakash Padia, for the Respondent**Final Decision:** Allowed

Judgement

Prakash Krishna, J.

The present writ petition is directed against the order dated December 6 2001 passed by the Additional District Magistrate (Supplies)/Rent Control and Eviction Officer, in Case No. 69 of 1999, with respect of the house No. C-08/99 Chetganj, Varanasi, declaring the accommodation in question as vacant in proceedings u/s 16(1)(b) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as U.P. Act No. 13 of 1972).

2. The Petitioner claims himself as tenant of a shop on the ground floor of premises No. C-08/99, Chetganj, Varanasi, since before 1972. An application for release of the said shop u/s 16(1)(b) of the Act was filed by Smt. Asha Devi, Respondent No. 1 herein claiming herself as owner and landlord of the said shop on the pleas inter alia that initially the shop in question was in the tenancy of one Narain Das since before 1972 who died in the year 1980 and thereafter the present Petitioner has come into possession, who is

brother-in-law of Narain Das (deceased) of the said shop. It was stated that there is a vacancy under the provisions of U.P. Act No. 13 of 1972 as the Petitioner is in occupation of the disputed shop without an allotment order. It was so held in S.C.C. Suit No. 77 of 1997, decided on 6th of August, 1999.

3. It is not necessary for the purposes of disposal of the present writ petition to notice the allegations of the Respondent No. 1 with regard to her bona fide need in view of the order proposed to be passed in the present writ petition. The said application particularly as to whether there is a vacancy in the shop in question was contested by the present Petitioner denying the contention of the Respondent No. 1 that he is an unauthorised occupant with the plea that he is in possession of the disputed shop as tenant with the consent of the landlady prior to 5th of July, 1976, which is a cut-off date as provided in the said Act.

4. The Respondent No. 2 by the impugned order dated December 6 2001, declared the shop in question as vacant on the finding that the occupation of the Petitioner over the disputed shop is unauthorised one.

5. Heard Shri S. N. Mishra, the learned Counsel for the Petitioner and Shri Prakash Padia, the learned Counsel for the Respondent No. 1 and the learned standing counsel for the Respondent No. 2. It was contended on behalf of the Petitioner that the finding recorded by the Rent Control and Eviction Officer on the question of vacancy and holding that the Petitioner is unauthorised one is against the provisions of Section 14 of the said Act. The learned Counsel for the Respondents supported the impugned order.

6. On a bare perusal of the impugned order, it is clear that the Rent Control and Eviction Officer has taken into consideration the facts and circumstances of the case, such as municipal assessment since 1st of April, 1976, receipt issued by the electricity department dated 9th of June, 1973, wherein name of the Petitioner is mentioned, other receipt dated 3rd of August, 1973, 6.4.1974 and 31st of January 2001, the registration certificate issued by the labour department of the year 1976 etc. and reached to the conclusion that the Petitioner has been in occupation of the disputed premises since before the cut-off date, i.e., 5th of July, 1976. The vacancy was declared on the ground that there is no material on record to show that possession of the Petitioner prior to 5.7.1976 was with the consent of the landlady. In this connection, it is relevant to extract Section 14 of the Act which reads as follows:

14. Regularisation of occupation of existing tenants.-Notwithstanding anything contained in this Act or any other law for the time being in force, any licensee (within the meaning of Section 2A) or a tenant in occupation of a building with the consent of the landlord immediately before the commencement of the Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976, not being a person against whom any suit or proceeding for eviction is pending before any Court or authority on the date of such commencement shall be deemed to be an authorised licensee or tenant of such

building.

7. On a plain reading of Section 14, it is quite apparent that besides the other things, occupation of a person who is in possession of premises on or before 5th of July, 1976, would be treated as regularised provided such occupation was with the consent of the landlord. The question which immediately arises is as to whether the "consent" is express or implied. Section 14 does not provide that the consent should be express or in writing. Legislatures wherever thought fit have made provision where express consent of landlord or consent in writing, is required. Reference can be made to Section 20(2)(d) of the Act wherein it has been provided that a tenant is required to have consent in writing of the landlord for using the premises for a purpose other than the purpose for which he was admitted to the tenancy of building. Similarly, u/s 25(2) written permission of the landlord and of the District Magistrate has been statutorily provided to sublet a part of the building. On examination of the scheme of U.P. Act No. 13 of 1972, an inference can be drawn that wherever express consent is required a provision has been made therein. In absence of requirement of express consent, the consent u/s 14 will include implied consent also.

8. Coming to the facts of the case on hand, it is clear that the Petitioner has been in occupation since before 5th of July, 1976, as found by the Rent Control and Eviction Officer. The payment and acceptance of rent as also payment of electricity dues are the facts indicative of implied consent of the landlord. The non-action of the landlord for not taking steps for more than two decades against the Petitioner treating him as unauthorised occupant also shows intention of the landlord not to treat the Petitioner as an unauthorised occupant. Inference of implied consent in the facts and circumstances of the case has to be drawn. It appears that the Rent Control and Eviction Officer proceeded to decide question of vacancy with a view that there should be an express consent which is on incorrect interpretation of Section 14, is incorrect.

9. But there is another aspect of the case yet. No finding in what capacity the Petitioner is in occupation has been recorded. It has to be ascertained that the Petitioner was in occupation prior to 5.7.1976, as "a tenant" and not as a licensee of the erstwhile tenant Narain Das (deceased), who died in the year 1980. The nature of the Petitioner's possession prior to 5.7.1976, and payment of rent etc., if any made by him, is to be examined. The case was not examined from this angle. It is expedient to remand it to the Rent Control and Eviction Officer for recording necessary findings on the other ingredients of Section 14 of the Act, before extending the benefit of Section 14 of the Act.

10. There has been civil litigation (Suit No. 77 of 1997 and Suit No. 1392 of 1996) between the parties and the application giving rise to the present writ petition was filed in the year 1999 and the Petitioner is in occupation of the disputed shop on payment of a nominal rent of Rs. 100 per month which is virtually no rent looking to the cost index. The prices of, immovable properties are sky-rocketed these days. To meet the ends of justice, it is expedient to direct the Petitioner to pay Rs. 2,000 as rent/damages for its use and occupation commencing from May 2007 till the continuance of possession by 7th of each

succeeding month. The shop in dispute is two khani, i.e., it consists of two compartment and two doors and is situated in densely populated area namely Chetganj, i.e., at the heart of the city Varanasi. The injunction order or any interim order which may be operative in favour of the Petitioner, passed by any Court, subordinate to High Court hitherto shall be subject to the above condition.

11. Viewed from any angle, the impugned order cannot be sustained and it is indefensible.

12. In the result, subject to what has been said above the writ petition succeeds and the impugned order is quashed and the matter is restored to the Rent Control and Eviction Officer to rehear and redecide it again preferably within a period of four months from the date of the receipt of this order. No order as to costs.