

(2012) 12 AHC CK 0213**Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No. 15883 of 2002

Arun Kumar Mehrotra and
Another

APPELLANT**Vs**

Rent Control and Eviction
Officer/City Magistrate and
Others

RESPONDENT**Date of Decision:** Dec. 6, 2012**Acts Referred:**

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 -
Section 12, 12(3), 15(1), 16(1)(b), 3(g)(i)

Citation: (2013) 5 ADJ 495**Hon'ble Judges:** Sudhir Agarwal, J**Bench:** Single Bench**Advocate:** B.N. Rai and Adarsh Kumar, for the Appellant; A.K. Srivastava, A.N. Singh, A.N. Sinha and B.P. Tiwari, for the Respondent**Final Decision:** Dismissed**Judgement**

Sudhir Agarwal, J.

Heard Sri B.N. Rai, learned counsel for the petitioners and Sri A.N. Sinha, learned counsel for the respondent No. 3. The writ petition is directed against the two orders passed by Rent Control and Eviction Officer, Kanpur Nagar (hereinafter referred to as "RCEO") on 12.2.2002 and 3.4.2002 in the proceedings u/s 15(1) of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") declaring vacancy in the disputed accommodation and u/s 16(1)(b) of Act, 1972, releasing the said accommodation in favour of landlord-respondent No. 3 and revisional order dated 9.4.2002 passed by Revisional Court dismissing revision in limine on the ground that revision is not maintainable.

2. It is contended that view taken by Revisional Court that revision is not maintainable is not correct, inasmuch as, an order passed u/s 16(1)(b) of Act, 1972 if results in ejection of sitting tenant, he has right to challenge the same and, therefore, Revisional Court erred in law in dismissing the revision as not maintainable.

3. With the consent of the parties, this Court has proceeded to consider order of RCEO declaring vacancy in the accommodation in question, inasmuch as, correctness of the said order would result in necessary consequence upon the subsequent orders.

4. The case set up by the petitioners is that building in dispute has accommodation on 1st, 2nd and 3rd floor. On the first and second floor each there are two rooms, kitchen, store, Angan, latrine, bathroom and on the third floor, there is a room and open roof. According to the landlord-respondent No. 3, first floor was in the tenancy of one Dashrath Chandra Mehrotra and second and third floor was under the tenancy of Arun Kumar Mehrotra and Anil Kumar, sons of Pooran Chandra Mehrotra. Sri Dashrath Chandra Mehrotra vacated the accommodation in his possession and illegally handed possession thereof in 1985-86 to Sri Anil Kumar and Arun Kumar Mehrotra. Sri Arun Kumar Mehrotra unauthorisedly gave possession of accommodation on the first floor to Sri Rajesh Kumar Gupta, son of Daulat Ram Gupta in 1993. The third floor is in the possession of Jagdish Khanna, who has also been allowed possession unauthorisedly and without any allotment. It is in these circumstances landlord-respondent No. 3 moved application on 16.7.1999 for release of disputed accommodation.

5. The petitioners contested the case set up by respondent No. 3 and pleaded that entire property was initially in the tenancy of Sri Krishna, grand father of petitioner who died in 1972 whereafter tenancy devolved upon Sri Pooran Chandra Mehrotra, petitioner's father, who died in 1988 and petitioners succeeded tenancy rights. Sri Dashrath Chandra Mehrotra was never tenant in accommodation in question. Sri Rajesh Kumar Gupta is residing in his own house at Birhana Road and Sri Jagdish Khanna, his brother in law, is not residing in the accommodation but used to visit being a closed relative.

6. RCEO, after considering various evidence adduced by parties, has recorded a finding that admittedly entire building in dispute was initially in the tenancy of Sri Krishna Khatri, grand father of the petitioners. He had two sons Sri Pooran Chandra Mehrotra and Dashrath Chandra Mehrotra and after his death, tenancy rights devolved on both the aforesaid sons. Sri Dashrath Chandra Mehrotra got another accommodation in 1979 and he shifted thereat. When a joint tenant/co-tenant shifted to another residential accommodation after getting his own house constructed or acquired in vacant state, by virtue of Section 12(3) of Act, 1972, the let out accommodation would stand deemed vacant. In taking this view, besides referring to Section 12(3) of Act, 1972, RCEO has referred to and followed Full Bench

decision in Smt. Ram Devi Shakhya and another v. First Additional District Judge, Lucknow and another, 1981 ARC 305 . The possession of co-tenant/joint tenant means that all the tenants enjoy the same single tenancy rights and once a co-tenant loses his right to occupy tenanted accommodation, it shall extend automatically to all the joint tenants. In taking this view, he (RCEO) has also referred to and relied on Apex Court's decision in Harish Tandon Vs. Addl. District Magistrate, Allahabad, U.P. and others,.

7. It is in these circumstances, RCEO has taken a view that tenancy rights of sole tenant Sri Krishna Khatri devolved on his sons, Pooran Chandra Mehrotra and Dashrath Chandra Mehrotra, in 1972, when Sri Krishna Khatri died, and, when one of the joint tenants/co tenants acquired his own residential house in the same city, namely Kanpur Nagar, in 1979, and started residing thereat, the tenanted accommodation fell vacant by deeming clause contained in Section 12(3) of Act, 1972.

8. I find no manifest error in the aforesaid view taken by RCEO. Sri B.N. Rai, learned counsel for the petitioners could place no substantive argument to pursue this Court to take a different view. Sri Rai however placed reliance on some of the authorities which I find lend no help to him, and I proceed to consider the same in detail.

9. He first placed reliance on Madan Gopal Maheshwari v. District Judge, Mathura and others, 1992 (2) ARC 241. Therein this Court held, if a family member has acquired residential building in the same local area i.e. son, there must be material to show that he/they (sons) were normally residing with the tenant or wholly dependent on him. The Court relied on the Explanation (b) to Section 12(3) of Act, 1972 and held that a legal fiction must be given effect to only when all the conditions mentioned for giving said effect are satisfied. As a matter of proposition, for the purpose of the present case, I have no quarrel with the said proposition though I find that words "as may have been normally residing with him or her" are contained in Section 3(g)(iii) of Act, 1972 and thus words are not in connection with categories mentioned in Section 3(g)(i) and (ii). However, for the purpose of Section 12(3), Explanation (b) is very clear and therefore whenever Section 12(3) is to be attracted in respect of any member of the family, it has to be read in the manner it is explained vide explanation (b) to Section 12 of Act, 1972. But here the words "any member of family" has no application for the reason that Sri Jagdish Khanna was not a "member of family" of the tenant but he himself was a co-tenant/joint tenant for the reason that single tenancy unit of Sri Krishna Khatri, father of Sri Pooran Chandra Mehrotra and Jagdish Chandra Mehrotra devolved with equal and common right upon both and thus both the sons satisfy the term "tenant" itself and cannot be said to constitute "member of family of tenant", after the death of Shri Krishan Khatri. Devolution of tenancy rights are upon both the above sons and they themselves become tenant and not member of family of a tenant. In the

circumstances when a tenant or joint tenant himself has acquired another residential accommodation, Section 12(3) of Act, 1972 would stand attracted, bereft of explanation (b) and hence reference thereto as also reliance on decision in Madan Gopal Maheshwari (supra) is misconceived.

10. At this stage Sri B.N. Rai, Advocate disputed the proposition of joint tenancy/co-tenancy and contended that on the death of sole tenant, legal heirs upon whom tenancy rights would devolve, shall take it as "tenant in common" and concept of joint tenancy in such a case is foreign and placed reliance on two judge Bench decision of Apex Court in [Mohd. Azeem Vs. District Judge, Aligarh and Others,](#) . I am constrained to observe that two judge bench decision of Apex Court in Mohd. Azeem (supra) has already been overruled by a three judge bench of Apex Court in Harish Tandan (supra). This later decision is also referred to by RCEO in the impugned orders but unfortunately it appears that Sri B.N. Rai, learned counsel for the petitioner, has not taken care to prepare the matter property and to go through the aforesaid larger bench decision of Apex Court in which the two judge bench decision in Mohd. Azeem (supra) has been held, not a good law, and has specifically been overruled. This Court is constrained to observe that a counsel having long standing is not expected to cite a case law which has been overruled long back and no longer a good law. Such an attempt on the part of counsel by citing a decision of Apex Court, which has already been overruled by larger bench, amounts to misleading the Court besides professional misconduct.

11. An Advocate is an officer of Court and expected to prepare his case with due diligence. He must take utmost care so that a bad law is not cited before the Court. Here mistake or ignorance on the part of learned counsel for the petitioner cannot be overlooked for the reason that larger bench decision in Harish Tandon's case (supra) is already referred to in the order of RCEO and if learned counsel would have cared and taken pain in going through the said judgment, he would have got information that the two judges decision on which he has founded his case is no longer a good law and this would have protected him from citing an overruled decision. But, unfortunately, even this has not been done by him. This is very unfortunate and deserved to be condemned with the strongest words.

12. In view of the above, not only this writ petition deserve to be dismissed but, in my view, the petitioner deserve to be saddled with heavy cost. In the result, the writ petition is dismissed with cost which I quantify to Rs. 25,000/-.