

(2004) 5 AWC 3855
Allahabad High Court
Case No: C.M.W.P. No. 48 of 1986

Mandir Radha Krishanji
Maharaj

APPELLANT

Vs

IIIrd Additional District
Judge and Others

RESPONDENT

Date of Decision: April 19, 2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 115#Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 â€” Section 16, 16(5), 18, 18(1), 18(2)#Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 â€” Rule 9

Citation: (2004) 5 AWC 3855

Hon'ble Judges: Tarun Agarwala, J

Bench: Single Bench

Advocate: S.N. Singh, R.N. Singh and A.N. Tripathi, for the Appellant; ShriKant, S.C., for the Respondent

Final Decision: Allowed

Judgement

Tarun Agarwala, J.

The Respondent Nos. 2 and 3 filed an application before the Rent Control and Eviction Officer intimating him that the

tenant of the disputed premises in question was going to vacate the shop in question and therefore, the said shop may be allotted to them. The Rent

Control and Eviction Officer directed the inspector to submit a report, who found that the shop was likely to fall vacant. Accordingly, the tenancy

of the shop was notified. The Rent Control and Eviction Officer issued a notice to Shyam Sunder Sharma, who is alleged to have given his consent

and on that basis the Rent Control and Eviction Officer issued an allotment order dated 14.9.1983 in favour of Respondent Nos. 2 and 3.

2. The Petitioner is a temple and is managed by its trustees. The Petitioner is the owner and the landlord of the premises in dispute. When the

Petitioner came to know about this allotment order, an application was filed u/s 16(5) of U. P. Act No. 13 of 1972 (hereinafter referred to as the

Act) by the Petitioner for reviewing the allotment order. In the said application, the Petitioner contended that Shyam Sunder Sharma was not the

landlord and had no right or authority to give the consent for allotment. Further, no notice as contemplated under Rule 9 of the Rules was served

upon the Petitioner. It was stated that Shyam Sunder Sharma was only authorised to collect the rent on behalf of the trust and was not authorised

to give the consent on behalf of the landlord. The Petitioner, therefore, prayed that the allotment order was obtained by misrepresentation and a

fraud was played upon the Petitioner and therefore, the allotment order should be cancelled. The Petitioner also moved a release application

praying that the premises may be released, in its favour as it was required for establishing a library and a reading room.

3. The Rent Control and Eviction Officer, by order dated 12.9.1984 allowed the review application and cancelled the allotment order. The Rent

Control and Eviction Officer found on the basis of an affidavit given by Shri Shyam Sunder Sharma, that he gave his consent on the

misrepresentation made by the Respondent Nos. 3 and 4 to the effect that other trustees had also given their consent and therefore, he had also

given his consent. On this basis the Rent Control and Eviction Officer found that Shyam Sunder Sharma was not the landlord and his consent was

based on misrepresentation and fraud. The authority further found that Shyam Sunder Sharma was only authorised to collect the rent and was not

authorised for any other act on behalf of the landlord and that the Managing Committee of the temple was only empowered to take a decision.

4. Aggrieved by the order cancelling the allotment order, the Respondent Nos. 2 and 3 filed a revision u/s 18 of the Act. The said revision was

allowed and the order dated 12.9.1984 was set aside and the allotment order dated 14.9.1983 was restored. The revisional court held that Shyam

Sunder Sharma is the landlord in view of the definition contemplated u/s 3(j) of the Act and that the notice was duly served upon the landlord and

that his consent was sufficient for the allotment of the premises in favour of the Respondent Nos. 2 and 3. The revisional court further found that

the allegations of misrepresentation and fraud did not arise in the facts and circumstances of the case.

5. The landlord-Petitioner has now preferred the writ petition.

6. Learned Counsel for the Petitioner submitted that the revisional court had no jurisdiction to interfere with the findings of fact. Section 18 of the

Act cannot be invoked even if an erroneous and wrong finding has been given by the Rent Control and Eviction Officer.

7. Section 18 (1), (2) of the Act reads as under:

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 with 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.

8. It is clear that Section 18 of U. P. Act No. 13 of 1972 is *pari materia* with Section 115 of the Code of Civil Procedure. The scope of Section

115 CPC is confined to the cases of illegal or irregular exercise or non-exercise or illegal assumption of the jurisdiction by the subordinate Court.

Similarly, Section 18 of the Act applies to jurisdiction alone. This section cannot be applied for correcting either a mistake of law or fact in which

the question of jurisdiction is not involved. While exercising powers u/s 18 of the Act, the revisional court cannot assume the function of an

appellate court. It has no power to reappreciate the evidence and to reverse the findings given by the authority below. The power of inquiry in a

revision is not as wide as that in an appeal. The power of appeal is one of review, whereas the power in a revision is supervisory. In exercise of the

supervisory power, the revising authority can only interfere if the error committed is that of jurisdiction. This view of mine finds support from a

decision in the case of *Chhidda Singh v. Ist Additional District Judge, Mathura and Ors.* 1979 ARC 47 and in the case of *Aziz Uddin v. Ist*

Additional District Judge, Agra and Ors. 1979 ARC 280.

9. In the present case, the revisional Court has decided the case treating itself to be the appellate Court. In the instant case, the Rent Control and

Eviction Officer after considering the evidence had recorded a finding that the allotment order was obtained by fraud and misrepresentation and

that Shyam Sunder Sharma was not the landlord and that the notices were not served upon the landlord as contemplated under Rule 9 of the

Rules. These findings of fact could not be interfered by the revisional court u/s 18 of the Act. The revisional authority exercised the jurisdiction,

which did not belong to it. It had no power to reappreciate the evidence and to reverse the findings given by the authority below. The revisional

order is unsustainable and liable to be set aside on this ground itself.

10. However, coming to the merits of the case, it is clear that Shyam Sunder Sharma could not be treated to be a landlord as contemplated u/s 3(j)

of the Act, which reads as under:

3(j) "landlord", in relation to a building, means a person to whom its rent is or if the building were let, would be, payable and includes, except in

Clause (g), the agent or attorney, of such person;

11. The aforesaid provisions makes it clear that where there is a privity of contract between two persons in pursuance of which rent is payable by

the person to the other in respect of a building occupied by him in the capacity of a tenant, the person to whom rent is payable, would be the

landlord of the person by whom the rent would be payable irrespective of the fact as to who was the actual owner of the property, i.e., to say the

landlord would be such person to whom the rent of the building was payable. However, the position would be different where the accommodation

falls vacant and notices are required to be issued to the landlord Under Rule 9 of the Rules. The question as to who would be the landlord to

whom the notices are required to be sent. In such a case the landlord would be the person, to whom rent, if the building was allotted, would be

payable. Thus, the landlord in such a case would be such a person to whom rent is or would be payable and will not be that person by whom rent

is physically collected on behalf of the landlord. Normally such person would be the owner of the building. Similar view was taken by this Court in

Laxmi Shanker Mishra v. Ist Additional District Judge 1976 (2) ALR 767.

12. The crucial question that arises for consideration is who would be the person to whom rent would be payable, if the building was let out or

allotted. In my view, it would be the person who was authorised to let out the building and recover the rent from the tenant. Normally such a

person would be the owner of the building. If the owner has authorised another person to let out the building and to recover the rent from the

tenant, in that case that person would be called the landlord as contemplated under the Act.

13. In the present case, Shyam Sunder Sharma was only authorised to collect the rent on behalf of the Petitioner. He was not authorised to let out

the building or give a consent on behalf of the landlord. Therefore, the mere fact that Shyam Sunder Sharma was collecting the rent on behalf of the

landlord would not make him the landlord u/s 3(j) of the Act for the purpose of issuing notice to the landlord under Rule 9 of the Rules. Further

Shyam Sunder Sharma has himself given an affidavit stating therein that he had given his consent on the misrepresentation made by the Respondent

Nos. 2 and 3 on the ground that other trusees had also given their consent and, therefore, he also gave his consent. It is, therefore, clear that

Shyam Sunder Sharma was not authorised to give the consent on behalf of the Petitioner and, therefore, he could not be termed to be a landlord as

defined under the Act. Thus, the finding given by the revisional court is per se erroneous and against the provisions of the Act.

14. It has also been brought to the notice of the Court that after the order of the Rent Control and Eviction Officer allowing the review application

and setting aside the allotment order, the Rent Control and Eviction Officer, thereafter, considered the release application of the Petitioner and by

order dated 14.12.1985 released the premises in favour of the Petitioner. This release order has not been set aside till date nor has been

challenged by the Respondent. The learned Counsel for the Petitioner submitted that the revision filed by the Defendant against the cancellation of

the allotment order had therefore, become infructuous. The Petitioner in para 6 of the writ petition has stated that the authority had released the

premises in question by order dated 14.12.1985. The Respondent has not denied this fact in para 13 of the counter-affidavit. Once the premises is

released in favour of the landlord, the proceedings u/s 16 of the Act comes to an end. The tenant ought to have challenged the order of the

authority allowing the release application by amending his revision filed u/s 18 of the Act. Unless and until the order allowing the release application

is set aside, the revisional court could not restore the allotment order. In the present case, admittedly, the order dated 14.12.1985, allowing the

release application was not challenged. Therefore, the revision of the Respondent against the order cancelling the allotment order became

infructuous.

15. In the result, the writ petition is allowed with costs and the order of the revisional Court dated 12.4.1985, is set aside.