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**(2016) 117 ALR 668 : (2016) 2 ARC 198**

**ALLAHABAD HIGH COURT**

**Case No:** Matters Under Article 227 No. 1943 of 2016.

Bharat Bhandari

APPELLANT

Vs

Rakshma Tewari and  
another

RESPONDENT

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**Date of Decision:** April 19, 2016

**Acts Referred:**

Constitution of India, 1950 " Article 227#Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 " Section 12

**Citation:** (2016) 117 ALR 668 : (2016) 2 ARC 198

**Hon'ble Judges:** Ram Surat Ram (Maurya), J.

**Bench:** Single Bench

**Advocate:** Ghanshyam Das Mishra, Ravi Kant and Tarun Agrawal, Advocates, for the Appellant; A.R. Dubey, Shobhit Dubey, Advocates, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Ram Surat Ram (Maurya), J. - Heard Sri Jafar Nayar, Senior Advocate, assisted by Dr. G.S.D. Mishra, for the petitioner and Sri A.R. Dubey

along with Sri Shobhit Dubey, for respondent-1.

2. This petition has been filed against the orders of Rent Control and Eviction Officer dated 26.12.2014, declaring vacancy, 08.04.2015, releasing

disputed accommodation in favour of Smt. Rakshma Tewari (respondent-1) and District Judge dated 16.03.2016 dismissing revision of the

petitioner against the aforesaid orders, in the proceedings under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972

(hereinafter referred to as the Act).

3. The dispute relates to tenement comprises of four rooms, latrine, bathroom and a small varandah in house 59/41, Birahana Road, Kanpur

Nagar, which was in tenancy of late Ishwardas Bhandari and the petitioner is claiming that he has inherited the tenancy. The petitioner earlier raised

a dispute that his tenancy was at third floor of the building while vacancy was declared in respect of tenement at second floor. In order to resolve

this dispute, this Court in Writ-A No. 38181 of 2015, by order dated 05.10.2015 issued an Advocate Commissioner for spot inspection, who

after spot inspection submitted his report dated 15.10.2015. After hearing the parties, this Court in judgement dated 12.01.2016 held that due to a

mezzanine floor, confusion relating to second floor and third floor has been created. Although tenement comprises of four rooms, latrine, bathroom

and a small varandah in house 59/41, Birahana Road, was in tenancy of Ishwardas Bhandari and vacancy was declared in respect of this tenement

as such issue raised in this respect has become redundant and immaterial.

4. Accommodation in dispute was allotted to Ishwardas Bhandari by District Magistrate on 31.05.1950, who died in 1975 and was inherited by

his son Krishna Gopal Bhandari. Krishna Gopal Bhandari died on 18.09.2008. According to the petitioner, his two brothers namely (i) Divya

Roop Bhandari obtained an accommodation 3/239-A, Vishunpuri, Nawabganj, Kanpur Nagar 15 years ago and shifted there along with wife and

children. (ii) Sanjay Bhandari purchased house 327, D Block, Shyam Nagar, Kanpur Nagar 22 years ago and began to reside there along with his

wife and children. At the time of death of Krishna Gopal Bhandari, he along with his mother, wife and children was residing in disputed

accommodation as such he alone inherited tenancy as his mother Smt. Puspa Bandari also died on 19.06.2010.

5. Vijit Kumar Shukla (respondent-2) filed an application dated 19.08.2010 for allotment of disputed accommodation on the ground that after

death of Smt. Puspa Bandari on 19.06.2010, disputed accommodation was lying vacant as three sons of Krishna Gopal Bhandari had already

shifted to their own houses during the life time of Krishna Gopal Bhandari. (i) Divya Roop Bhandari obtained an accommodation 3/239-A,

Vishunpuri, Nawabganj Kanpur Nagar 15 years ago and shifted there along with wife and children. (ii) Sanjay Bhandari purchased a house 327, D

Block, Shyam Nagar, Kanpur Nagar 22 years ago and shifted there and (iii) Bharat Bhandari shifted to house no. 117/109, L Block, Naveen

Nagar, Kakadeo, Kanpur Nagar. On this application, Rent Control Inspector submitted his report dated 13.09.2010, showing disputed

accommodation as vacant.

6. The petitioner filed his objection and affidavit dated 25.11.2011. Thereafter he filed his application, affidavit and papers on 11.03.2013 and

application and affidavit on 22.07.2013. Vijit Kumar Shukla filed his reply and affidavit dated 29.08.2012 and 20.05.2013. In the meantime Smt.

Rakshma Tewari purchased the house in dispute from its owners through sale deed dated 13.06.2011. She, through her father and Power of

Attorney holder Om Prakash Bajpai, filed an application dated 23.01.2012 for her impleadment in the proceeding. Thereafter she filed an

application and affidavit for release of disputed accommodation under Section 16 of the Act on 10.11.2014.

7. Rent Control and Eviction Officer, after hearing the parties, by his order dated 26.12.2014 declared vacancy. The petitioner challenged the

aforesaid order in Writ-A No. 8988 of 2015 before this Court, which was dismissed by order dated 16.02.2015. The petitioner filed a correction

application in it which was also dismissed on 23.02.2015. Thereafter, Rent Control and Eviction Officer heard the release application of

respondent-1 and by order dated 08.04.2015, released disputed accommodation in favour of respondent-1. Respondent-1 filed an application

(registered as Case No. 11 of 2015) for execution of release order. In the meantime, on the application of the petitioner, Rent Control and

Eviction Officer, by order dated 20.06.2015, stayed operation of release order. Respondent-1 challenged order dated 20.06.2015 in Writ-A No.

38181 of 2015. The petitioner filed a revision (registered as Rent Revision No. 7 of 2015), in which an interim order dated 30.05.2015 has been

passed. Writ-A No. 38181 of 2015 was disposed of by order dated 12.01.2016, directing District Judge to decide Rent Revision No. 7 of 2015,

considering both the issues i.e. merit of declaration of vacancy and order of release, holding that issue of second floor or third floor is immaterial as

the proceeding is going on in respect of tenement, in which the petitioner is claiming himself as the tenant.

8. District Judge, thereafter, heard the revision on merit and by his order dated 16.03.2016 held that only two rooms existing at third floor of house

59/41, Birahana Road while disputed accommodation is lying at second floor. Orders dated 26.12.2014 declaring vacancy and 08.04.2015,

releasing disputed accommodation in favour of respondent-1 do not suffer from any illegality. On these findings, he dismissed the revision. Hence

this petition has been filed.

9. The counsel for the petitioner submitted that report of Rent Control Inspector dated 13.09.2010 and orders Rent Control and Eviction Officer

dated 26.12.2014 declaring vacancy and 08.04.2015, releasing accommodation in favour of respondent-1 were in respect of accommodation at

second floor of the premises, while accommodation in tenancy of the petitioner is at third floor. Rent Control Inspector has never inspected third

floor of the building as such his report is irrelevant for accommodation in tenancy of the petitioner, which is at third floor. Rent Control Inspector

has not given any prior notice to the petitioner for inspection. At the time of inspection, there was lock on the door and only on its basis vacancy

was shown. The petitioner along with his family was residing in disputed accommodation since life time of his father. The petitioner has his bank

account at Bank of Baroda, Branch Birahana Road Kanpur from this address. He along with his daughter Swati Malhotra has a joint account at

State Bank of Bikaner and Jaipur, Branch Birahana Road. Another account of Bharat Bhandari HUF at Punjab National Bank, Mall Road

Branch. He and his wife Smt. Kamini Bhandari are voters in Electoral Roll of the year 1995. The petitioner has electricity connection in his name in

this house. There has been some dispute in relation to meter reading as such in bill it has been noted that (bill theek hona hai"". Due to use of mobile

cellphone, land line has been disconnected. The petitioner is an income tax payee and address of this house is noted in his assessment. The

petitioner has gas connection at this premises. In school records of his son and daughter, address of this premises is noted which fully proves that

the petitioner along with his family is residing in it. Landlord in collusion with authority got prepared Voter I.D. Card of the petitioner from premises

327, D-Block, Shyam Nagar. The petitioner is continuously residing in premises in dispute. Respondent-1 is having premises No. 24/54 Birahana

Road, which is two floor building having construction in an area of approximately 3000 sq. feet. Apart from it first floor of premises No. 59/41

Birahana Road was vacated by tenant Vijay Kumar Agrawal and it is in possession of respondent-1 and she has no need at all. Release order has

been mechanically passed without holding proper inquiry. Allotment order dated 31.05.1950 filed by the petitioner has been illegally ignored on the

ground that its photostat copy was filed, while this was copy of own record of Rent Control and Eviction Officer and ought to have been

corroborated from official record. Rent Control and Eviction Officer has relied upon photostat copies of sale deed, sanctioned map etc., which

were not admissible in evidence. He relied upon judgements of Supreme Court in Yogendra Tiwari v. District Judge, (1984) 2 SCC 728, in which

it has been held that order of allotment without giving opportunity of hearing to landlord is illegal. R.K. Shukla v. Sudhrist Narain Anand, (2008) 7

SCC 393, in which it has been held that declaration of vacancy can be challenge in writ petition, challenging allotment order. Disputed premises

found locked at the time of inspection by Rent Control Inspector, only on its basis no inference of vacancy can be drawn. Shiv Sarup Gupta v. Dr.

Mahesh Chandra Gupat, (1999) 6 SCC 222, in which it has been held that bona fide need means real, genuine and pressing need and not mere

desire of landlord. S.R. Tewari v. Union of India, 2013 AIR SCW 3338, in which it has been held that findings recorded ignoring material

evidence and on inadmissible evidence is perversity. Orders of Rent Control and Eviction Officer and District Judge are illegal and liable to be set

aside.

10. I have considered the arguments of the counsel for the parties and examined the record. Preliminary objection raised by the counsel for the

respondent regarding maintainability of the writ petition by out going tenant relying upon judgement of this Court in Smt. Usha Dixit v. Mohd.

Javed, 2015 (2) Civil Appeal Report 1, has no force as Supreme Court in Achal Mishra II v. Rama Shankar Singh, (2005) 5 SCC 531 and R.K.

Shukla v. Sudhrist Narain Anand, (2008) 7 SCC 393, has been held that declaration of vacancy can be challenge in writ petition, filed against

allotment order. Thus an out going tenant is entitled to challenge both the orders i.e. declaration of vacancy and release of accommodation. An out

going tenant cannot be treated like a prospective allottee, who stands on different footing.

11. The petitioner earlier raised a dispute that his tenancy was at third floor of the building while vacancy was declared in respect of tenement at

second floor. In order to resolve this dispute, this Court in Writ-A No. 38181 of 2015, by order dated 05.10.2015 issued an Advocate

Commissioner for spot inspection, who after spot inspection submitted his report dated 15.10.2015. Then after hearing the parties, this Court, in

judgement dated 12.01.2016 held that due to a mezzanine floor, confusion relating to second floor and third floor has been created. Although

vacancy has been declared in respect of tenement comprises of four rooms, latrine, bathroom and a small varandah in house 59/41, Birahana

Road, which was in tenancy of Ishwardas Bhandari as such issue raised in this respect is redundant. In spite of specific findings of this Court, the

petitioner again raised this dispute before Revisional Court, who after examining various evidence on record held that disputed accommodation

was lying at second floor and not at third floor as at third floor there is only two rooms and not four rooms accommodation, which was in tenancy

of Ishwardas Bhandari and now the petitioner is claiming it by way of inheritance.

Findings in this respect does not suffer from any illegality. After

decision of this Court dated 12.01.2016, it is not open to the petitioner to raise this dispute again before this Court.

12. The order of declaration of vacancy dated 26.12.2014, was challenged by the petitioner in Writ-A No. 8988 of 2015 before this Court, which

was dismissed by order dated 16.02.2015. As such the petitioner cannot be allowed to challenge it again. However, this Court in Writ-A No.

38181 of 2015, by order dated 12.01.2016 directed revisional court to examine merit of order dated 26.12.2014 also as such this issue is being

examined again. Section 12 (3) of the Act, provides that in case of a residential building, if the tenant or any member of his family builds or

otherwise acquires in a vacant state or get vacated a residential building in same city then he shall be deemed to have ceased to occupy the building

under his tenancy. The proceedings under the Act are being decided on the basis of affidavit according to Section 34 (1) (b) of the Act as such if

along with affidavit, photostat of any document is filed as its annexures then reliance can be placed on it unless it is rebutted.

13. There is no dispute that disputed accommodation was allotted to Ishwardas Bhandari on 31.05.1950 and tenancy was inherited by his son

Krishna Gopal Bhandari after his death in 1975. According to the respondents, Krishna Gopal Bhandari died on 18.09.2008 and his wife Smt.

Pushpa Bhandari died on 19.06.2010. Three sons of Krishna Gopal Bhandari acquired their own houses in same city during life time of Krishna

Gopal Bhandari and shifted there along with their family. After death of Smt. Pushpa Bhandari disputed accommodation is lying vacant. Death

certificates of Krishna Gopal Bhandari showing his death on 18.09.2008 and Smt. Pushpa Bhandari showing her death on 19.06.2010 were filed.

The respondent filed copy of sale deed by which plot No. 327, D-Block, Shyam Nagar, Kanpur Nagar was jointly purchased by the petitioner

along with his brother. After obtaining free-hold right, they got map for construction sanctioned from Kanpur Development Authority and

constructed their house. The petitioner purchased Maruti car and its registration dated 29.08.2010 was obtained in the name of the petitioner, in

which address of 327, D-Block, Shyam Nagar, was given. Voter I.D. Card of the petitioner and his wife was made from 327, D-Block, Shyam

Nagar. Gas connection, electricity connection etc were also in the name of Bharat Bhandari at 327, D-Block, Shyam Nagar. The documents on

record indicate that names of Bharat Bhandari and Divya Roop Bhandari were recorded in Municipal record as owner of house 327 D-Block,

Shyam Nagar, Kanpur Nagar. Whereas Sanjay Bhandari was living separately at Kakadev, Kanpur as per own contention of Bharat Bhandari.

14. Electricity connection in disputed accommodation has been disconnected on 31.3.2012 for non-payment of electricity dues. Reading of

Telephone bill of the accommodation in question in the name of Bharat Bhandari is "Zero". The papers produced by Bharat Bhandari showing his

occupation in disputed accommodation, were prior to 2010. Rent Control Inspector had given a report that at the time of inspection disputed

accommodation was found looked. In view of Section 12 (3) of the Act, vacancy has been rightly declared. This Court, in exercise of supervisory

jurisdiction under Article 227 of the Constitution does not find any illegality in the order dated 26.12.2014.

15. So far as release order dated 08.04.2015 is concerned, respondent-1 came with the case, that she was residing in tenanted accommodation at

house 24/54, Birahana Road, Kanpur Nagar. Her family consists herself, her husband, two daughters, husband's elder brother and his wife.

Members in family of respondent-1 was more than members in the petitioner's family. Although in petition, the petitioner has stated that

respondent-1 is owner premises No. 24/54 Birahana Road, which is two floor building having construction in an area of approximately 3000 sq.

feet but no paper to prove that respondent-1 is owner of this building has been filed. The petitioner has further alleged that first floor of premises

No. 59/41 Birahana Road was vacated by tenant Vijay Kumar Agrawal and it is in possession of respondent-1 but nothing has been filed in this

respect. Thus looking to the need of respondent-1, release order has been rightly passed.

16. In view of aforesaid discussion, the petition has no merit and is dismissed.