
(2013) 05 AHC CK 0032

In the Allahabad High Court

Case No : C.M.W.P. No. 19703 of 1989 & Civil Miscellaneous Writ Petition No. 19703 of 1989

Abrar Ahmad

APPELLANT

Vs

Rent Control and Eviction Officer, Allahabad and Others

RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Citation : (2013) 99 ALR 538 : (2013) 6 AWC 5587

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Advocate : N.P. Pandey, S.N. Misra and S.P. Misra, for the Appellant; M.A. Qadeer, S.K. Taneja, K.P. Agarwal and Kameshwar Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—This writ petition was dismissed on 3.5.2005 for non-prosecution as no one had appeared for either of the parties. Thereafter restoration application was filed. On 15.5.2013, arguments on the restoration application as well as merit of the writ petition were heard and Judgment was reserved. By order of date restoration application has been allowed through order passed thereupon. This is tenant's writ petition directed against vacancy declaration order u/s 12 of U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 hereinafter referred to as U.P. Act No. 13 of 1972. The vacancy declaration order was passed by R.C. and E.O., Allahabad on 27.10.1986 in Case No. 113 of 1985 relating to House No. 265 First floor situate at Chak Allahabad. The order was passed on the application of Mohd. Mehendi mutawalli of wakf alul aulad respondent No. 3. Through the application release of the property in dispute u/s 16 of U.P. Act No. 13 of 1972 had been sought on the ground of landlord's bona fide need. It was also stated that it was vacant for the reason that the tenant Abrar Ahmad had constructed his house bearing No. 160A/2 mohalla Garhl Kalan, Allahabad and as the tenant Abrar Ahmad was railway employee and a quarter in the railway colony bearing No. 494F had also

been allotted to him.

2. Abrar Ahmad pleaded that the house which he had constructed at Garhi Kalan was not residential and in the said house he was running a school by the name of New Indian Nursery English School.

3. Rent Control Inspector had inspected the said house and given report on 11.9.1985 to the effect that the tenant Abrar Ahmad was residing alongwith his wife and children in the house at Garhi Kalan constructed by him.

4. R.C.I. had also recorded that only in part of the house at Garhi Kalan constructed by the tenant nursery school was being run from 9 a.m. to 1 p.m.

5. Rent Control and Eviction Officer declared the vacancy u/s 12(3) of the Act. Against the said order petitioner filed R.C. Revision No. 407 of 1986, Vth Additional District Judge, Allahabad on 19.1.1989 dismissed the revision as not maintainable.

6. After dismissal of the revision petitioner filed an application before R.C. and E.O., Allahabad for recall of vacancy declaration order which was rejected on 20.7.1989. All these orders have also been challenged through this writ petition.

7. During arguments learned counsel for both the parties stated that building in dispute had not till then been released or allotted. Abrar Ahmad the petitioner did not file any affidavit before R.C. and E.O. Only his son had filed some affidavit.

8. Regarding the allotment of the quarter in railway colony to the petitioner, petitioner took up a fantastic case. He asserted that the house was allotted to him but possession was not delivered as the previous occupant Shri U.N. Tewari even after his retirement continued to occupy the same and the allotment was only a paper transaction. If a railway quarter is allotted to a railway employee, it entails some financial burden upon him in the form of deduction of some amount from salary as rent (or non-payment of House Rent Allowance) hence it was inconceivable that petitioner would allow such paper transaction to remain in existence.

9. I do not find least error in the impugned order declaring the vacancy. The petitioner has got two premises one a house constructed by him and another a railway quarter allotted to him. If a person starts running a school in a house instead of residing in that, he cannot avoid the applicability of Section 12(3) of the Act.

10. Even after holding that impugned order declaring vacancy is perfectly in accordance with law one more aspect requires consideration. Section 2 of U.P. Act No. 13 of 1972 provides exemption from operation of the Act. It was amended in 1994-95 and clause (bbb) was added to its subsection (1) providing that the Act shall not apply to any building belonging to or vested in a wakf including a wakf alal aulad. The point is squarely covered by the Supreme Court

authority in M/s. Ambalal Sarabhai Enterprises Ltd. Vs. M/s. Amrit Lal and Co. and Another, . The facts of the said case were that landlord had Initiated proceeding for eviction against the tenant under Rent Control Act on the ground of subletting before Rent Controller. Rate of rent was more than Rs. 3,500 per month. During pendency of the proceedings through amendment in the Rent Control Act buildings carrying rent of more than Rs. 3,500 per month were taken out of the ambit of the Rent Control Act. The Supreme Court in para 22 held that the landlord's right of eviction of tenant on any ground like default, sub-letting etc. under the Rent Control Act was not vested right of the landlord. Thereafter in paragraph 23 onward particularly paragraph 35 it was held that such right of the landlord was accrued right and by virtue of Section 6 of General Clauses Act the said right was saved even after the amendment of the Act. Paragraph 35 of the said authority is quoted below:

35. In view of the aforesaid legal principle emerging, we come to the conclusion since proceeding for the eviction of the tenant was pending when repealing Act came into operation. Section 6 of the General Clauses Act would be applicable in the present case. As it is landlord's accrued right in terms of Section 6. Sub-section (c) of Section 6 refers to "any right" which may not be limited as a vested right but is limited to be an accrued right. The words "any right accrued" in Section 6(c) is wide enough to include landlord's right to evict a tenant in case proceeding was pending when repeal came in. Thus pending proceeding before the Rent Controller for the eviction of a tenant on the date when the repealing Act came into force would not be affected by the repealing statute and will be continued and concluded in accordance with the law as existed under the repealed statute.

11. Accordingly, inspite of insertion of Section 2(1)(bbb) in the Act taking out the buildings belonging to Wakf from the ambit of the Act the proceeding which had already been initiated and in which vacancy had also been declared can very well continue. Accordingly, writ petition is dismissed. Landlord's release application u/s 16 of the Act may promptly be considered by the R.C. and E.O.