

(2014) 08 AHC CK 0022
In the Allahabad High Court
Case No : Writ-A No. 27681 of 2001

Amar Nath

APPELLANT

Vs

R.C. & E.A./1st, Allahabad and Others

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Citation : (2015) 108 ALR 551

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Radhey Shyam and Rakesh Kumar, Advocates for the Appellant; Q.H. Siddiqui, Advocates for the Respondent

Judgement

Pankaj Mithal, J.—Petitioner had filed this petition against the order of vacancy dated 4.5.1999 and the order dated 19.7.2001 by which his application for review was rejected. The dispute is regarding the portion of house No. 25, Gariwan Tola, Allahabad. One Shiv Shankar applied for its allotment and as such proceedings for declaring it vacant came to be initiated. On the basis of the report of the Rent Control Inspector dated 30.11.1992, the premises was declared to be vacant by the impugned order dated 4.5.1999.

2. Heard Sri Rakesh Kumar, learned Counsel for the petitioner. No one has appeared for the respondent No. 2 despite list being revised. Therefore, having no option left, I have perused the counter-affidavit and is deciding the petition.

3. The submission of learned Counsel for the petitioner is that the vacancy has been declared in violation of Rule 8(2) of the Rules framed under the Act as no notice before inspection was given to the petitioner. Secondly, the review application has been rejected by a non-speaking order.

4. The Rent Control and Eviction Officer in declaring the vacancy has relied upon the inspection report dated 30.11.1992. It has been recorded therein that one Pyarelal @ Kallu Maharaj was the tenant of the premises in dispute. He died in 1977. His wife has predeceased him. He had no son. His married daughter Smt.

Kamla Devi use to reside with him and continued to live therein till 1987. Thereafter she shifted to Madhya Pradesh.

5. Petitioner, who is owner and landlord, filed objections against the report contending that the building was in dilapidated condition and stood demolished. The inspection report has been submitted without actual inspection. The respondent No. 2 is a clever person who some how wants to get the premises in dispute allotted in his favour. The only one room portion of the said house is used by his nephew and as such there is no vacancy.

6. The Rent Control and Eviction Officer on the basis of the aforesaid facts and circumstances held that the premises has been vacated by the previous tenant and his daughter has also shifted. Therefore, it is vacant. There is no evidence that the house has been demolished.

7. Rule 8(2) of the Rules framed under the Act which are of mandatory nature provides that the inspection shall be made as far as possible in the presence of the landlord and the tenant or any other occupant and the report should be elicited from atleast two respectable persons of the locality.

8. The perusal of the inspection report does not reveal that any notice was given to the petitioner or that the inspection was made in his presence. The report does not even contain any statement that it was not possible to conduct the inspection in the presence of the petitioner landlord. There is no reference of any notice to the petitioner also. Thus, the inspection report appears to be in clear violation of principles of natural justice.

9. The report of the Rent Control Inspector has not been elicited by any two respectable persons of the locality. It mentions two persons of the locality as the witnesses but none of them is said to have signed the report. In view of above, it cannot be said that the report has been duly elicited by the two persons of the locality.

10. The counter-affidavit is silent about any notice upon the petitioner before inspection.

11. In Mahaveer Prasad Kamalia Vs. Rent Control and Eviction Officer, Maharajganj and Others, it has been held that order of vacancy passed on the basis of the report of the Rent Control Inspector which was made in complete violation of Rule 8 of the Rules framed under the Act without serving notice upon the landlord is illegal and cannot be sustained.

12. In view of the aforesaid facts and circumstances, the order of vacancy is clearly in violation of Rule 8(2) of the Rules is not tenable.

Accordingly, the order of vacancy dated 19.7.2001 is quashed.

The writ petition is allowed.