
(1995) 01 AHC CK 0133
In the Allahabad High Court
Case No : C.M.W.P. No. 901 of 1982

Amar Nath Mehrotra

APPELLANT

Vs

IIIrd Addl. District Judge and Others

RESPONDENT

Date of Decision : 03-01-1995

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(5)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 10(9)

Citation : (1995) 01 AHC CK 0133

Hon'ble Judges : A.B. Srivastava, J

Bench : Single Bench

Advocate : R.P. Tripathi, for the Appellant;

Final Decision : Allowed

Judgement

A.B. Srivastava, J.—This writ petition has been filed seeking a writ of certiorari quashing an Order dated 23.12.1977 of the R.C. and E.O. rejecting a review application for cancelling the allotment of a shop situated in Building No. 12 Meerganj, Allahabad to the Respondent No. 3 and Order dated 17.12.1981 of the Additional District Judge, Allahabad dismissing the Petitioner's revision against the same. .

2. The facts relevant are that on a letter sent by Respondent No. 4, Rajendra Nath Mehrotra who is the brother of the Petitioner Amar Nath Mehrotra, intimating R.C. and E.O. about his desire to let out the shop in question and nominating the Respondent No. 3 Smt. Shashi Prabha Agrawal. After giving notice to the Respondent No. 4 the R.C. and E.O. made an allotment of the shop in favour of the Respondent No. 3 by order dated 25.3.1974. When the allotted tried to take possession with police aid, the Petitioner on coming to know of the same, filed an application for review u/s 16(5) of Act 13 of 1972 on 6.5.1974. The application was opposed by the Respondent No. 3. The R.C. and E.O.

rejected the same on 31.5.1974. The appeal against it was dismissed by the District Judge. The Petitioner preferred Writ Petition No. 6214 of 1974 which was allowed, and quashing the two orders, the R.C. and E.O. was directed to decide the application u/s 16(5) after enquiry into the question as to whether as claimed the Petitioner was a co-owner and the allotment without notice to him was invalid and whether the allotment was obtained by fraud and misrepresentation.

3. After the remand, the R.C. and E.O. by the impugned order held the petitioner to be a co-owner but not entitled to notice, and rejected the review application. The revision was dismissed by the District Judge as not Maintainable at the instance of the petitioner.

4. This Writ Petition filed and admitted on 20.1.1982. Notice was issued and service was held sufficient on the Respondents and the case was directed to be listed for disposal before the court. Meanwhile the record was lost in the office and on an application to that effect being moved by the Petitioner, it has been re-constructed. Notice by registered post was issued again to the Respondents No. 3 and 4. The same was not returned back, hence service has been held to be sufficient.

5. There has not been filed any counter affidavit nor any appearance on behalf of the Respondent Nos. 3 and 4. Learned Counsel for the Petitioner has been heard.

6. As far as the questions of fact are concerned, there is the finding of the R.C. and E.O. himself that the Petitioner is one of the co-owners of the building in question. If being so, the case of the Petitioner is squarely covered by the decision rendered and the principles laid down, by a Division Bench of this Court, in *Madhu Gopal v. VIth Additional District Judge, Agra and others* 1988 (2) ARC 1, affirmed by the Supreme Court vide *Madhu Gopal Vs. VI Additional District Judge and Others*. It has categorically been laid down in the aforesaid authorities that a co-landlord even if he is not in possession is entitled to move an application for review u/s 16(5) of Act 13 of 1972. The authority *Sri ram Pasricha v. Jagannath and Ors.* 1977 ARC 83 (SC.) referred in this regard by the R.C. and E.O. is on a different point. The question involved in the said case related to the right of one co-owner to file an eviction suit against the tenant. It was in this context that the Supreme Court held one of the co-sharers alone to be competent to file suit for eviction.

7. As regards the grievance of the Petitioner against the validity of the allotment order is concerned, admittedly the application to put the premises in question for the first time in the allotment hotchpotch was made only by the Respondent No. 4 and not by the Petitioner or for that matter, the other co-sharers. Admittedly no notice as required Under Rule 10(9) was given to the Petitioner to signify his willingness for allotment or nominating a person of his choice. The Impugned allotment in favour of the Respondent No. 3 thus is bad and unsustainable being in violation of the said mandatory provision. This view also finds support from the principles laid down in *Madhu Gopals case (supra)*. The said order thus

deserves to be quashed. Now more than 20 years having passed since the proceedings started and the Petitioner who is one of the co-sharers having categorically stated that he is not agreeable to any allotment of the shop in question, no purpose will be served by remanding the case for starting the exercise of Rule 10(9) again. The Petitioner is entitled to writ of certiorari quashing the order of the allotment as well as orders dated 23.12.1977 and 17.12.1981.

8. The writ petition is accordingly allowed, the impugned orders of the R.C. and E.O. and the Additional District Judge are set aside and the order of allotment dated 25.3.1974 is quashed.