

(1992) 11 AHC CK 0100

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14334 of 1986

Anil Kumar Jain

APPELLANT

Vs

Rent Control and Eviction Officer and Another

RESPONDENT

Date of Decision : 17-11-1992

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(10), 16(9), 9, 9(2), 9(2)A
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 8

Citation : (1993) 1 AWC 472

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : Ravi Kiran Jain, for the Appellant;

Final Decision : Partly Allowed

Judgement

S.P. Srivastava, J.—Being aggrieved by an order passed by the Rent Control and Eviction Officer, Saharanpur, whereunder the said authority has refused to recall the order dated 24-7-1982 fixing Rs. 50/- per month as the presumptive rent for the accommodation in dispute and to re-fix the said rent, the Petitioner landlord has approached this Court for redress seeking the quashing of both the orders.

2. The facts shorn of details and necessary for the disposal of this case are that the premises in dispute was allotted In favour of the tenant Respondent vide the allotment order. The Rent Control and Eviction Officer, however failed to fix the presumptive rent as envisaged u/s 16(9)(b) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act). This obviously led to the omission of any presumptive rent being mentioned in formal allotment order issued in form-B. Later on by an order dated 24-7-1982 the Rent Control and Eviction Officer fixed an amount of Rs. 50/- per month as presumptive rent in respect of the accommodation In dispute. Coming to know of this order, the landlord Petitioner moved an application dated 20-8-1992 praying

that the order dated 24-7-1982 fixing presumptive rent be recalled and the same be refixed after affording an opportunity of hearing to the landlord. In the aforesaid application, it was pointed out that the out going tenant who had been occupying the accommodation in dispute was paying Rs. 425/- as rent in respect of the said accommodation and in the circumstances, the presumptive rent could not have been fixed at figure less than 531.25/- per month. It was also pointed out in the said application that the accommodation in question was a flat rent for the residence of the officers and had three living rooms, one store, one verandah, kitchen, bath room, flush latrine etc. with all modern facilities. Alongwith this application, the landlord filed affidavits and other evidence in support of his case. During the pendency of the aforesaid application a revision filed against the order dated 20-7-1982, was dismissed on 16-4-1985. The application referred to above, filed by the landlord came up for consideration thereafter and was dismissed on 15-7-1986 on the ground that in view of the dismissal of the revision directed against the order of allotment dated 20-7-1982, the said allotment order could not be amended and that the presumptive rent had been fixed after taking into account the report of the Rent Control Inspector, the conclusion whereof had been published on the notice board of the office of the District Magistrate in the proceedings under Rule 8 of the Rules framed under the Act, against which no objection had been filed.

3. I have heard Sri. R.K. Jain, learned Senior Advocate, appearing for the Petitioner and Sri. H.S. Nigam, learned Counsel representing the tenant Respondent and have further carefully perused the record.

4. The learned Counsel for the Petitioner has urged that before fixing presumptive rent, the Rent Control and Eviction Officer ought to have afforded an opportunity of bearing to the Petitioner which was not done. It has further been asserted that the conclusions of the inspection report, which is pasted on the notice board in the proceedings for ascertainment of vacancy envisaged under Rule 8 of the Rules framed under the Act can not be deemed to be a notice of a proceedings relating to fixation of presumptive rent. In this connection, it may be noticed that while issuing an order of allotment, the District Magistrate has to fix "presumptive rent" which is considered prima facie reasonable having regard to the provisions of Sub-section (2) and 2-A of Section 9, provides that such amount shall not be less than the amount of rent which was payable by the last tenant if any. The provisions contained in Section 16(10) contemplate that in the proceeding regarding fixation of presumptive rent, the District Magistrate may not take any evidence for holding any formal enquiry and that the amount mentioned in the allotment order as presumptive rent shall be subject to any agreement in writing between the parties or to any subsequent determination of standard rent after formal enquiry u/s 9. The liability to pay the presumptive rent continues to remain fast ended on the tenant until it is so revised by agreement or by an order u/s 9 of the Act. An order revising the presumptive rent passed u/s 9, of the Act however, relates back to the date of the commencement of the tenancy.

5. Since the presumptive rent as mentioned in the allotment order is to be at a figure which the District Magistrate prima facie considers reasonable and in the proceedings for such fixation he is not required to take any evidence or hold any formal enquiry, the question of affording an opportunity of hearing to the landlord in these proceedings is not at all necessary. This position is further clear from the use of the word "prima facie" used in the explanation to Section 16(9) of the Act and further from the fact that the District Magistrate is not required to take any evidence or hold any formal enquiry before fixing of such presumptive rent. The right of the landlord to get the rent revised and mistake, if any, corrected in the proceedings u/s 9 of the Act stands secured under the provisions contained in Section 16 (9) and (10) of the Act. The assertion of the learned Counsel for the Petitioner therefore, that under the scheme envisaged u/s 16 (9) and (10) of the Act, the landlord ought to have been afforded an opportunity of hearing before fixing the presumptive rent is totally misconceived and is not liable to be accepted.

6. In the present case, the view of the Rent Control and Eviction Officer to the effect that the order dated 24-7-1982 fixing presumptive rent got merged in the order dismissing the revision directed against the order dated 20-7-1982 is totally misconceived. No presumptive rent had been fixed in the order dated 20-7-1982. It is this omission which had resulted in initiating the fresh proceedings for fixation of presumptive rent in which the order dated 24-7-1982 had been passed. The presumptive rent having been fixed by a separate order, the dismissal of the revision directed against the order dated 20-7-1982, in the circumstances of the present case, could not result in the merging of the order fixing presumptive rent dated 24-7-1982 in the order dismissing revision dated 16-4-1985. The Rent Control and Eviction Officer has further erroneously presumed that the landlord ought to have put forward his case about the quantum of rent in the proceedings for ascertainment of the vacancy under Rule 8 of the Rules framed under the Act. The proceedings contemplated under Rule 8 of the Rules are confined to the question relating to the ascertainment of the vacancy in respect of an accommodation. The objection, if any, which could be filed in these proceedings are expected to be confined to the question relating to the occurrence and non occurrence of the vacancy in respect of the accommodation.

7. In the totality of the circumstances of the present case, I am of the view that in the interest of justice, it is necessary that Rent Control and Eviction Officer, Respondent No. 1 be directed to consider the application dated 20-8-1982 as an application for determination of standard rent envisaged u/s 9 of the Act after affording the landlord an opportunity of amending the same, if found necessary.

8. In the result this writ petition succeeds in part. The order dated 15-7-1986, a true copy of which had been filed as Annexure-8 to the writ petition is quashed. The Rent Control and Eviction Officer, Saharanpur, Respondent No. 1 is directed to decide the application of the landlord dated 20-8-1982 afresh in accordance

with the law, treating the same as an application envisaged u/s 9 of the Act after affording an opportunity to the parties to amend their pleadings if necessary. The parties will be at liberty to lead evidence in support of their respective cases and the Rent Control and Eviction Officer shall dispose of the said application as expeditiously as possible after affording the opportunity of hearing to the parties concerned.