

(2011) 03 AHC CK 0402
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12683 of 2011

Arun Kumar Gupta

APPELLANT

Vs

Prescribed Authority, Rent Control/Additional City Magistrate
and Others

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 13, 15(1), 16, 16(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 22, 8(2)

Citation : (2011) 3 ADJ 598 : (2011) 3 AWC 3188

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the Petitioner and perused the record.

2. Respondent landlord applied u/s 15(1) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act), for declaration of vacancy in godown No. 1 of Sri Ram Mahadev Prasad, a registered firm situated at 363, Harrisganj, Police station Rail Bazar, Kanpur Nagar, in which the Petitioner claims to be a tenant since 1990.

3. Contention of the counsel for Petitioner is that Rent Control Inspector without compliance of Rule 8(2) of the Rules framed under the Act, submitted his report regarding vacancy. Notices issued by the prescribed authority, are claimed not to have been served upon the Petitioner by registered post as they have been returned with postal remark "not claimed". The Respondent then got the notices published in daily newspaper "Lok Jan Samachar", in response to which also, the Petitioner did not put in appearance. The prescribed authority thereafter proceeded to declare vacancy by its order dated 18.6.2009.

4. It is submitted by the counsel for Petitioner that the Respondents got their application u/s 16 of the Act as not pressed and has again applied u/s 16(1)(b) of the Act, but the Petitioner was not served with any notice of these proceedings also and in the circumstances, the prescribed authority vide its order dated 30.7.2009 released the disputed premises in favour of the Respondent Nos. 2, 3 and 4. The Petitioner thereafter received from "C" issued on 22.7.2010 and came to know about the ex parte order. He then applied on 12.8.2010 for recall of the orders dated 18.6.2009 as well as order dated 30.7.2009.

5. The recall application filed by the Petitioner has been rejected by the prescribed authority vide order dated 31.1.2011. Aggrieved the Petitioner has come up in this petition challenging the validity and correctness of the orders dated 31.1.2011, 22.7.2010, 30.7.2009 and 18.6.2009 appended as Annexure Nos. 8, 5, 4 and 2 respectively to the writ petition. These orders have been challenged on the ground that the prescribed authority/Additional City Magistrate, Kanpur Nagar has committed an illegality in rejecting the recall application only on the ground that Petitioner has admitted the fact that he was a tenant since 1990 without any allotment order issued under the Act and his tenancy cannot be regularised.

6. It is submitted by the counsel for Petitioner that limitation for declaration of vacancy or for moving release application under law is 12 years from the date of coming into possession of the accommodation by the tenant or other person. It is stated that as the application of the landlord for declaration of vacancy and release, was filed beyond the period of 12 years, it was barred by time. According to the counsel, the prescribed authority has not applied its mind to the explanation given by the Petitioner for his non appearance while deeming the service of notice as sufficient by publication.

7. No other point has been argued.

8. After hearing the counsel for the Petitioner, it appears that the commercial godown in question is situated in a part of residential premises No. 361, Harrisganj, Police station Rail Bazar, Kanpur Nagar. Sri Brijendra Kumar Agrawal-landlord had informed the prescribed authority about vacancy in the aforesaid godown and had applied for its release in his favour. After receipt of report from Rent Control Inspector, the proceedings were initiated on the application of the landlord and it was declared as vacant by order dated 18.6.2009. The vacancy was then published in the newspaper but neither any objection? were received nor the order declaring the vacancy was contested by any party, as such the prescribed authority released the godown in favour of the landlord vide its order dated 30.7.2009.

9. It also appears that thereafter Petitioner Sri A.K. Gupta through his application dated 12.8.2010 u/s 34(1)(g) of the Act read with Rule 22(b) of the Rules framed under the Act and Section 151, Code of Civil Procedure, moved the authority for recall of the orders impugned, on the ground that he is tenant of

two storeyed godown since 1990 and he has filed the application on coming to know about the orders impugned on receipt of Form "C" from the office of Additional City Magistrate, - Kanpur Nagar. He has challenged the orders impugned on the ground that notice had not been given under Rule 8(2) of the Rules framed under the Act. As regards publication, it was submitted that the newspaper does not have wide circulation in the area. He also filed certain receipts issued by the landlord and on the basis of tenancy claimed by him since 1990, he prayed for decision of the case on merits.

10. Notices were issued on the recall application and Sri Arun Kumar Gupta (the Petitioner) was heard as landlord did not appear in the proceedings in spite of the notice. The Court below then recorded the following findings:

11. It is apparent from the findings recorded above that admitted case of the Petitioner is that he claimed himself to be a tenant in the godown since 1990. His only contention before the Prescribed Authority is that release application filed by the landlord after more than 12 years is barred by time.

12. The prescribed authority has considered this plea and has come to the conclusion that since provisions of the Act are in force and are applicable to the premises in dispute since prior to 1990, tenancy of the Petitioner cannot be regularised as he was not a tenant of the godown prior to enforcement of the Act and that after enforcement of the Act, a person could occupy a building only after allotment order in his favour in accordance with law. Considering also the provisions of Sections 12 and 13 of the Act, the authority has concluded that as tenancy of the Petitioner cannot be regularised in the aforesaid circumstances, has rejected the application filed by the Petitioner u/s 34(1)(g) of the Act read with Rule 22(b) of the Rules framed under the Act and Section 151, Code of Civil Procedure.

13. Act No. 13 of 1972 has been enforced by publication in the gazettee with effect from 31.3.1972. It was legislated in the interest of general public for regulation of letting, rent and eviction of tenants from certain classes of buildings situated in urban areas and for matters connected therewith. Section 12 of the Act is provision for declaration of deemed vacancy of buildings in certain cases. One of the condition is that building shall be deemed to be vacant if it is allowed to be occupied by any person who is not a member of family of the landlord. Section 13 of the Act provides restrictions on occupation of building without allotment order in favour of tenant or a release order in favour of landlord. Thus, a combined reading of Sections 12 and 13, makes it clear that allotment or release order is a must before the building can be occupied by a person as tenant if he is not a member of the family of the landlord or the landlord himself respectively. In the instant case, the Petitioner has not claimed himself to be a member of family of the landlord. His claim is that he has occupied godown No. 1 - a commercial building since 1990 as tenant i.e. after enforcement of the Act, therefore, in view of the provisions of Section 12 read with Section 13 of the Act, even though the Petitioner occupied the building, but it would be deemed to be

vacant under the aforesaid provision.

14. As regards Rule 8(2) of the Rules is concerned, it is in respect of ascertainment of vacancy u/s under Sections 12, 16 and 34(b) and provides that the District Magistrate shall before making any order of allotment or release in respect of any building which is alleged to be vacant u/s 12 or to be otherwise vacant or to be likely to fall vacant, get the same inspected by a Gazetted Officer and inspection of the building in so far as possible, shall be made in the presence of the landlord and the tenant or any other occupant. Therefore, shred of all niceties the Rule provides that as far as possible the landlord, the tenant or any other person occupying building should not go unheard. The Petitioner claims that no notice was served upon him under Rule 8(2). The whole object of Rule 8 appears that so far as possible parties may be served with notice" so that they may appear before the prescribed authority, have their say and file their objection if so desire in the matter. This opportunity has later been granted to the Petitioner on his application u/s 34(1)(g) of the Act read with Rule 22(b) of the Rules framed under the Act and Section 151, Code of Civil Procedure, therefore, substantial compliance of the principles of natural justice have been made in this case.

15. Even otherwise, the object of the Rules is to protect the tenant who is legally occupying the premises from being unduly harassed by the landlord. A person who is otherwise in occupation of a building without any allotment order, cannot be deemed to be a tenant occupying the building under provisions of the Act which is a beneficial piece of social legislation for regulating letting, rent and eviction of the tenants. The purpose and object of the Act cannot be defeated by anyone who otherwise occupies the building in sheep's clothing in utter violation of the provisions of the Act, on the ground of limitation which is permissible only to a tenant occupying the building in accordance with the provisions of the Act. If the Courts allow such unauthorised occupant to continue in the building who has occupied it against the provisions of the Act and the intent of the legislature, then such an interference will defeat the very purpose and object of this beneficial piece of legislation. Therefore, this Court is of the opinion that limitation of 12 years, if it is to be read, is only in respect of a tenant who is occupying the building in terms of the Act whose occupation can be regularised either u/s 2-A, or Section 12 or Section 13 of the Act and not otherwise.

16. For the reasons stated above, no illegality or infirmity in the orders impugned have been shown. The petition fails and is accordingly dismissed. No order as to costs.