

(2003) 03 AHC CK 0089

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 12105 of 2003

Arvind Singh Parihar

APPELLANT

Vs

Rent Control and Eviction Officer/ ACM IIIrd, Kanpur Nagar &
Ors.

RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12(1)(a), 12(1)(b), 12(1)(c), 12(3), 13

Citation : (2003) 03 AHC CK 0089

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

Final Decision : Disposed Of

Judgement

S.P. Mehrotra, J.—This writ petition has been filed under Article 226 of the Constitution of India, inter alia, praying for quashing the order dated 1612003 (Annexure 9 to the writ petition) passed by the learned Rent Control and Eviction Officer/ACM IIIrd, Kanpur Nagar (Respondent No. 1).

2. The dispute relates to an accommodation situated on the ground floor of premises No. 108/84A, Gandhi Nagar, P. Road, Kanpur Nagar. The said accommodation has, hereinafter, been referred to as 'the disputed accommodation'.

3. From the allegations made in the writ petition, it appears that the proceedings for declaration of vacancy in respect of the disputed accommodation were initiated on the basis of an intimation of vacancy dated 872002 (Annexure 7 to the writ petition) given by the landlady (Respondent No. 2) of the disputed accommodation.

4. The report of the Rent Control Inspector was called for. The Rent Control Inspector submitted his report dated 782002 (Annexure 4 to the writ petition). Thereupon, notices were issued to the concerned parties.

5. Objections dated 16112002 were filed on behalf of the petitioner. The

petitioner as well as the landlady (Respondent No. 2) filed affidavits and documents in support of their respective cases.

6. By the order dated 1612003, the Rent Control and Eviction Officer/ACM IIIrd, Kanpur Nagar declared vacancy in the disputed accommodation under Section 12(1)(a), Section 12(1)(b), Section 12(1)(c), Section 12(3) and Section 13 of the U.P. Act No. 13 of 1972 (in short 'the Act').

7. Thereafter, the petitioner has filed the present writ petition seeking the reliefs mentioned above.

I have heard Sri K.K. Tripathi, learned counsel for the petitioner.

8. Sri Tripathi, learned counsel for the petitioner submits that the petitioner was in occupation of the disputed accommodation with the consent of the landlady (Respondent No. 2) and, therefore, the order declaring vacancy in the disputed accommodation was vitiated.

9. Having considered the submissions made by the learned counsel for the petitioner, I find myself unable to accept the same.

10. From a perusal of the impugned order dated 1612003, it is evident that there was no dispute between the parties that Aditya Narain Singh was the original tenant in the disputed accommodation, and that the said Aditya Narain Singh had acquired his own residential house in Kidwai Nagar, Kanpur Nagar and had shifted to the said house and had vacated the disputed accommodation in his tenancy, and that the petitioner Arvind Singh Parihar was married to Asha Singh, daughter of the said Aditya Narain Singh in the year 1985, and that at present the petitioner Arvind Singh Parihar was in occupation of the disputed accommodation with his wife. Further, on a consideration of the material on record, it was, inter alia, held in the impugned order dated 1612003 that the petitioner Arvind Singh Parihar, son-in-law of the said Aditya Narain Singh began to reside in the disputed accommodation after 1985. It was, therefore, concluded in the impugned order dated 1612003 that the said Aditya Narain Singh, the tenant in the disputed accommodation acquired his own house No. 133/194B/16A, 'O' Block, Kidwai Nagar, Kanpur Nagar, and had shifted with his entire effects from the disputed accommodation to the said house in Kidwai Nagar; and that thereafter, the said Aditya Narain Singh had allowed his son-in-law and daughter to occupy the disputed accommodation without any valid allotment. Accordingly, it was concluded, there was deemed vacancy in the disputed accommodation under Section 12(1)(a), Section 12(1)(b), Section 12(1)(c), Section 12(3) and Section 13 of the Act.

11. In view of the said findings recorded in the impugned order, it is evident that there was deemed vacancy in the disputed accommodation under the aforesaid provisions of the Act.

12. In this connection, it is pertinent to refer to Section 12 of the Act which is quoted below:

12. Deemed vacancy of building in certain cases. (1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if

(a) he has substantially removed his effects therefrom, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary residence, elsewhere.

(2) In the case of nonresidential building, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building.

(3) In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy:

Provided that if the tenant or any member of his family had built any such residential building before the date of commencement of this Act, then such tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date.

[Explanation. For the purposes of this sub section

(a) a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee;

(b) the expression "any member of family", in relation to a tenant, shall not include a person who has neither been normally residing with nor is wholly dependent on such tenant.]

[(3A) If the tenant of a residential building holding a transferable post under any Government or local authority or a public sector corporation or under any other employer has been transferred to some other city, municipality, notified area or town area, then such tenant shall be deemed to have ceased to occupy such building with effect from the thirtieth day of June following the date of such transfer or from the date of allotment to him of any residential accommodation (whether any accommodation be allotted under this Act or any official accommodation is provided by the employer) in the city, municipality, notified area or town area to which he has been so transferred, whichever is later.

(3B) If the tenant of a residential building is engaged in any profession, trade, calling or employment in any city, municipality, notified area or town area in

which the said building is situate, and such engagement ceases for any reason whatsoever, and he is landlord of any other building in any other city, municipality notified, area or town area, then such, tenant shall be deemed to have ceased to occupy the first mentioned building with effect from the date on which he obtains vacant possession of the last mentioned building whether as a result of proceedings under Section 21 or otherwise.]

(4) Any building or part which a landlord or tenant has ceased to occupy within the meaning of subsection (1), or subsection (2), or [subsection (3), subsection (3A) or sub section (3B)], shall, for the purposes of this Chapter, be deemed to be vacant.

[(5) A tenant or, as the case may be, a member of his family, referred to in subsection (3) shall, have a right, as landlord of any residential building referred to in the said sub section which may have been let out by him before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976 to apply under clause (a) of sub section (1) of Section 21 for the eviction of his tenant from such building, notwithstanding that such building is one to which the remaining provisions of this Act do not apply.]]?

13. It has been held in the impugned order on a consideration of the material on record that the said Aditya Narain Singh, the tenant in the disputed accommodation had removed all his effects from the disputed accommodation. Therefore, there was deemed vacancy within the meaning of Section 12(1)(a) of the Act.

14. Again, the finding has been recorded in the impugned order on a consideration of the material on record that the said Aditya Narain Singh with his family had shifted to the said house acquired by him in Kidwai Nagar. Therefore, there was deemed vacancy under Section 12(1)(c) of the Act.

15. Again, it has been held in the impugned order on a consideration of the material on record that the said Aditya Narain Singh, the tenant of the disputed accommodation allowed his soninlaw and married daughter to occupy the disputed accommodation without any valid allotment order. Soninlaw and married daughter are not included in the "family" of the tenant as is evident from the definition of the word "family" in Section 3 (g) of the Act. Thus, the said Aditya Narain Singh, the tenant in the disputed accommodation allowed a person who was not a "member of his family" to occupy the disputed accommodation. Evidently, therefore, there was deemed vacancy under Section 12(1)(b) of the Act.

16. It has also been held in the impugned order on a consideration of the material on record that the said Aditya Narain Singh, tenant in the disputed accommodation had acquired his own residential house in Kidwai Nagar as mentioned above, and had shifted to the said house. Thus, the said house acquired in Kidwai Nagar was evidently acquired by the said Aditya Narain Singh

in a vacant state. Hence, there was deemed vacancy under Section 12(3) of the Act also.

17. A perusal of the impugned order further shows that the petitioner Arvind Singh Parihar occupied the disputed accommodation after 1985 without any allotment order. Section 13 of the Act provides as follows:

?13. Restrictions on occupation of building without allotment or release. Where a landlord or tenant ceases to occupy a building or part thereof, no person shall occupy it in any capacity on his behalf, or otherwise than under an order of allotment or release under Section 16, and if a person so purports to occupy it, he shall, without prejudice to the provisions of Section 31, be deemed to be an unauthorized occupant of such building or part.?

18. As the petitioner Arvind Singh Parihar occupied the disputed accommodation without any allotment order, he would be deemed to be unauthorized occupant of the disputed accommodation in view of Section 13 of the Act.

19. As regards, the submission made by the learned counsel for the petitioner regarding the alleged consent of the landlady (Respondent No. 2), I am of the opinion that the petitioner Arvind Singh Parihar having come in occupation of the disputed accommodation after 1985, the alleged consent of the landlady (Respondent No. 2), if any, was not material.

20. In order to appreciate the submission made by the learned counsel for the petitioner, it is relevant to refer to Section 14 of the Act which provides as follows:

?14. Regularization or occupation of existing tenants. [Notwithstanding anything contained in this Act or any other law for the time being in force, any licensee (within the meaning of Section 2A) or a tenant in occupation of a building with the consent of the landlord immediately before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976, not being a person against whom any suit or proceeding for eviction is pending before any Court or authority on the date of such commencement shall be deemed to be an authorized licensee or tenant of such building].?

21. A perusal of Section 14 shows that the benefit of Section 14 of the Act is available only to a tenant who was in occupation of a building with the consent of the landlord immediately before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976 i.e. 5th July, 1976. As noted above, the petitioner Arvind Singh Parihar came in occupation of the disputed accommodation after 1985. Hence, the benefit of Section 14 of the Act could not be extended to the petitioner Arvind Singh Parihar, even if it be assumed that there was consent of the landlady (Respondent No. 2).

22. It is thus evident that the impugned order does not suffer from any illegality.

23. In view of the aforesaid discussion, I am of the opinion that this writ petition lacks merit, and the same is liable to be dismissed. The writ petition is accordingly dismissed.