

(2010) 08 AHC CK 0335

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No.42151 of 1998

Ashok Kumar and another

APPELLANT

Vs

Rent Control and Eviction Officer, Ghaziabad and others

RESPONDENT

Date of Decision : 20-08-2010

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12

Citation : (2010) 08 AHC CK 0335

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.

Heard learned counsel for the parties and perused the record.

This petition has been filed challenging the validity and correctness of the judgment and order dated 27.11.1998, passed by the Rent Control and Eviction Officer, Ghaziabad.

The order impugned is challenged on the ground that the Rent Control and Eviction Officer, Ghaziabad has wrongly placed reliance on a sale deed dated 10.4.1989 in which address of Vinod Kumar Saxena, respondent no.3 was shown as 581, Kirtanwali Gali, Bazaria, Ghaziabad for holding that he was not living separately from his father in the year 1985. He has stated that this finding of the Rent Control and Eviction Officer for not declaring the vacancy in the house in dispute is against the evidence on the record, is perverse, illegal and not sustainable.

Learned counsel for the petitioners has submitted that Vinod Kumar Saxena was a member of the family of Shiv Lal and inherited the accommodation as tenant but acquisition of a vacant house by him is not to be taken into consideration for the purpose of Section 12 of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act"). He has placed

reliance upon the case of Mohd. Azeem vs. District Judge, Aligarh and others, 1985 ARC 85. In the aforesaid case the Apex Court was considered the provisions of Section 12(3), 3(a)(1) and 3(g) of the Act as to when deemed vacancy would arise. The facts of that case were, the original tenant, his widow and three sons were living in the tenanted house upon whom the tenancy devolved upon death of the original tenant. One of the sons built their own house in the same city and shifted in it. But the other two sons, widow and daughter did not shift. The Court, in the circumstances held that the other two sons, widow and daughter will remain to be the tenant in the same house and shifting of one of the sons in the acquired accommodation will not attract the deemed provisions of Section 12(3) of the Act.

In the instant case release application was filed by the landlord. Paragraphs 6 to 12 are relevant, which are reproduced for ready reference:

The aforesaid paragraphs have been replied in paragraph 4 to 11 of the objection filed by the petitioners, which are reproduced as under:

Counsel for the respondents has contended that it is apparent from paragraphs 10, 11 and 12 that every member of the family of late Shiv Lal, who were tenants of the house are clearly independent. According to him, Ashok Kumar had acquired house No.D38, Dak Khane Wali Gali in the name of his wife and similarly Naresh Kumar has also purchased House Nos.235 and 236 situated at Gurudware Wali Gali, Bazaria on 13.4.1992. It appears that there is no dispute so far as Ashok Kumar is concerned, as he has already left the building in dispute and has shifted to his own house. The only dispute that remains is in respect of wife of Naresh Kumar, petitioner no.2, who has been substituted in his place.

The contention of the learned counsel for the petitioners is that wife of petitioner no.2 had sold the house purchased by Naresh Kumar during the pendency of the litigation and in view of Section 12(3) of the Act vacancy was liable to be declared.

Learned counsel for the petitioners has relied upon paragraph 8 of his written statement and he submits that it is not disputed that each of the sons of late Shiv Lal, who was tenant in the house in dispute has purchased his separate house. However, the house purchased by Naresh Kumar, petitioner no.2, who has now been substituted by his widow and minor children was not in a vacant condition as in that house one Sri Rajan Singh and Gopal Das were tenants. Due to untimely death of Naresh Kumar who was suffering for liver sclerosis had to sell off the house to meet the expenses and the loans which she has taken for the purpose of medical treatment of her husband. It is emphatically stated that the house which was purchased by Naresh Kumar was not acquired by him in vacant condition and the possession was only symbolic, hence the provisions of Section 12(3) of the Act would not be attracted in the facts and circumstances of the case.

Considering the facts and circumstances, it is admitted to the parties that Shiv

Lal was the original tenant in the house in dispute which consists of two small rooms and tin shed and in that he was living with his three sons, namely, Ashok Kumar, Naresh Kumar and Vinod Kumar. All these sons had acquired their own house. Vinod Kumar and Ashok Kumar, who had acquired their houses in vacant position have shifted in them but, the house purchased by Naresh Kumar was not in a vacant position as is apparent from paragraph 8 of the written submission. A perusal of the release application filed by the petitioners would also established that he has no where asserted that Naresh Kumar had purchased the house in a vacant possession.

From paragraph 8 of the written statement filed by the petitioner, it is clear that the house purchased by Naresh Kumar was not in a vacant position and there was two tenants, namely, Rajan Singh and Gopal Das, living in it, from before the purchase of the house by the petitioner. Therefore, in my considered opinion, the provisions of Section 12(3) of the Act would not apply in the facts and circumstances of the case.

The cases cited by the petitioners as well as the respondents are not applicable to the facts and circumstances of this case for the reasons that in the case of Mohd. Azim (supra) the house purchased was in a vacant condition by one of the tenants, whereas this is not the position in the present case. However, the ratio that each of the joint tenant has individual right is to be taken into consideration as has been held in the aforesaid case.

In view of the reasons stated above, the writ petition is allowed. The order dated 27.11.1998, passed by the Rent Control & Eviction Officer, Ghaziabad, is quashed.

No order as to cost.