
(2013) 02 AHC CK 0139
In the Allahabad High Court
Case No : Writ - A No. 37711 of 2002

Ashwani Kuma Dixit

APPELLANT

Vs

Rent Control & Eviction Officer & Others

RESPONDENT

Date of Decision : 14-02-2013

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12(3)

Citation : (2013) 02 AHC CK 0139

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri M.A. Qadeer, learned Senior Advocate, assisted by Mohd. Shamim Ahmad, Advocate, for the petitioner and perused the record.

2. It is not in dispute that petitioner's father had acquired a residential accommodation at 19/67, Ram Nagar Bazar, Patkapur, Kanpur. The proceedings for declaring vacancy, pursuant where to the impugned order dated 14.6.2002 has been passed by Rent Control and Eviction Officer, Kanpur Nagar (hereinafter referred to as "RCEO"), were initiated on an application filed by Sri Shafeeq Ahmad, respondent no. 3, who sought allotment of the said accommodation by Release Application dated 16.4.2001. Even if contention of petitioner is accepted that residential accommodation allegedly acquired by petitioner's father in the name of his wife i.e. petitioner's mother was prior to enforcement of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972"), that would make no difference since the Proviso pertaining to "deemed vacancy" as contained in Section 12 (3) Proviso of Act, 1972 is clearly attracted in such a case as it reads as under:

"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. "

3. Therefore, even in those case where a residential accommodation has been acquired by a member of family of tenant before commencement of Act, 1972, in such cases also deemed vacancy shall occur after expiry of a period of one year from the said date.

4. In the circumstances, once this fact is admitted that petitioner's father, who was original tenant in the accommodation in question, acquired a residential accommodation elsewhere even before enactment of Act, 1972, that would result, by operation of law, in a deemed vacancy and, hence, on an application made by respondent no. 3, RCEO was well within his rights to declare vacancy in the accommodation in question. The question of limitation in this case does not arise at all as held by this Court in WRIT A No. 33751 of 1999 (Smt. Uma Yadav Vs. A.D.M. (Supply)/RCEO Varanasi and others) decided on 16.7.2012, wherein in para 72 to 78 this Court held as under:

"72. Can it be said that cause of action would arise immediately as and when a person occupy an accommodation without any letter of allotment and in all cases this 12 years period will commence therefrom, I find that on this aspect, no issue has ever been raised in all the aforesaid decisions and therefore it has neither been argued nor decided as to when a "cause of action would arise" and "whether it would necessarily arise in any case only on the date when a person takes possession of a accommodation without any latter of allotment or there can be different dates".

73. In my view, this question is of much relevance so as to attract the aforesaid period of limitation or laches, whatever terminology one may use. Such illegal occupation/unauthorised occupation can be challenged /assailed by three sets of people:

i.Landlord, whose accommodation is unauthorizedly occupied by someone.

ii.Applicant, i.e. a prospective allottee who is in the need of an accommodation and has applied for allotment of an accommodation to RCEO. Here we will term him as "prospective allottee" for future discussion.

iii.RCEO/District Magistrate, as the case may be, who has power to declare vacancy or to proceed to make allotment in case of a deemed vacancy of a particular premises.

74. In respect to the first set namely, owner of the premises, normally he would get knowledge of occupation of his building by someone unauthorizedly as soon as such possession is taken and therefore, so far as landlord/owner is concerned in his/her case, cause of action may arise on the date of such unauthorised occupation. However where landlord can show that for certain reasons, namely landlord is residing elsewhere in different city or in different country or for any other reason, had no knowledge whatsoever about such unauthorised occupation, cause of action would arise and continue to arise on the date he acquired such knowledge for the simple reason that without such knowledge, one

is not expected to take an action for ejectment/release from unauthorised occupant.

75. So far as the authorities are concerned, one cannot presume that they can get knowledge immediately as soon as a person is put in possession of a building unauthorisedly, i.e. without any letter of allotment. Such possession can be given in various ways namely, by outgoing tenant without any notice to the landlord and Rent Control Authorities and/or by inducting an outsider to the premises in question and thereafter vacating the premises by tenant already occupying it, or with the consent of landlord, possession of an accommodation is given to a person without informing the authorities and without making the building available for allotment under the statute.

76. Section 15 makes it obligatory upon tenant and landlord to inform the Rent Control Authorities i.e. District Magistrate about vacancy occurring or likely to fall within a specific time with the power to condone delay in giving such information. It is only when this provision has been complied with, it can be said that District Magistrate or Rent Control Authorities had the knowledge of vacancy and yet, if they do not take any action to evict an unauthorised occupant for such a long time, the laches can be applied. In my view, so far as Rent Control Authorities are concerned, in their case, cause of action would arise on the date, factum of unauthorised occupation by someone has come to their knowledge.

77. Attributing knowledge of unauthorised occupation without any intimation to authorities may render redundant and virtually nullify the efficacy of the statute, and, the purpose and objective with which these provisions have been made. Probably for this reason, in respect to certain cases where action may not have been taken by Rent Control Authorities immediately, the legislature itself has made provision like Section 12 regarding "deemed vacancy" of building and such "deemed vacancy" would continue. Action for vacation of an unauthorised occupant can be conceived only when authorities concerned gather information/notice of such unauthorised occupation. Therefore, in case of Rent Control Authorities, again it is the knowledge of such unauthorised occupation wherefrom the said period of 12 years would commence and not otherwise.

78. Now coming to the third category namely prospective allottee(s). They also cannot be presumed to possess knowledge every time, whenever an individual has got possession unauthorisedly or otherwise i.e. without any letter of appointment or not. The position of vacancy can be gathered by prospective allottee only when vacancy in a premises is entered in the register maintained in the office of RCEO as contemplated in Rule 9(3) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (hereinafter referred to as "Rules, 1972") unless it can be shown otherwise by positive evidence that particular prospective allottee acquired knowledge of unauthorised occupation at a particular point of time even before entry of vacancy in the register under Rule 9(3) and in such case, cause of action may arise from that date. Therefore, in respect to the third category, either it is the date on which vacancy is entered in

the register maintained under Rule 9(3) of Rules, 1972 or the date of knowledge acquired by the prospective allottee."

5. It is not the pleading by petitioner that prospective allottee, i.e. respondent no. 3 had any knowledge about the alleged vacancy much before date of his application dated 16.4.2001 or the RCEO was aware of the factum of "deemed vacancy" before the said application was filed by prospective allottee and accommodation in question was inspected by officials of RCEO. In view thereof, I find no manifest error in the impugned order passed by RCEO warranting interference.

6. Writ petition lacks merit. Dismissed.