
(2010) 05 AHC CK 0186
In the Allahabad High Court
Case No : Writ A. No. 24657 of 2010

Banwari Lal and another

APPELLANT

Vs

District Judge, Varanasi and others

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Citation : (2010) 05 AHC CK 0186

Hon'ble Judges : Devendra Pratap Singh, J

Final Decision : Disposed Of

Judgement

Devendra Pratap Singh,J.

1. Heard learned counsel for the petitioner and perused the record.
2. The petitioners are the owners of the disputed accommodation and is litigating with respondent nos. 3 and 4 since long. The facts would be evident from the perusal of the order dated 11th of August 2008 passed in Writ Petition no. 60228 of 2007 filed by the respondent no.4, which reads as under:

"Heard learned counsel for the parties.

Petitioner is daughter of respondent no.2. Mohan singhMohan Singh, Respondents Nos. 3 and 4 namely Banwari Lal and Murari Lal are the landlords. Mohan Singh respondent no.2 himself initiated proceedings for allotment in respect of property in dispute under Sections 12 and 16 Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 in the form of Case No.61 of 2001 alleging that it was vacant. Rent Control and Eviction Officer/ Additional District Magistrate (Civil Supplies), Varanasi declared the property in dispute to be vacant through order dated 21.2.2005. The allotment appication was in respect of four rooms on the ground floor of house no.D38/125 Hauj Katora Dashwaswamegh, Varanasi. Rent Control Inspector had reported that several rooms in the building on ground and first floors were in occupation of applicantMohan Singh. Before R.C.I it was stated on behalf of landlord that

property in dispute was a guest house belonging to the landlord and Mohan Singh was manager of the Guest house and after closure of the guest house Mohan Singh was continuing in possession. On the next visit of R.C.I Mohan Singh stated that on the four rooms on the ground floor there was dispute since 1969 and since 1981 the landlords had opened a guest house and had made him Manager and had given two rooms on second floor as Manager's room; and that in 1983 when guest house was closed he took two rooms on the second storey also on rent. Thereafter on 3.10.2001 Mohan Singh filed an application for getting his allotment application dismissed as not pressed. However, on 19.11.2001 he filed second application for getting the not pressed application dismissed as not pressed. Thereafter landlords filed detailed objections before R.C.& E.O.. Landlords stated that they had purchased the property through registered sale deed dated 16.2.1978 and thereafter guest house was established in the said building. It was further stated that Mohan Singh was appointed as paid Manager of the guest house and given one room on the ground floor in connection with his job. It was further stated that thereafter Mohan Singh illegally occupied one more room on the ground floor and a kitchen and two rooms and one store on the second storey. Landlords also filed release application. Thereafter several sons and daughters of Mohan Singh included the petitioner also filed allotment applications. Thereafter property in dispute was released in favour of landlord respondents on 7.3.2005. Thereafter Mohan Singh filed revision being rent revision no.23 of 2005. district Judge, Varanasi through order dated 15.3.2005 stayed the operation of release order. Thereafter petitioner daughter of Mohan Singh also filed R.C.Revision No.47 of 2005. According to the learned counsel for the petitioner, petitioner has filed the revision only against vacancy declaration order. Thereafter both the revisions were consolidated. Mohan Singh filed writ petition no.9274 of 2007 against consolidation order which was dismissed on 27.7.2007. Thereafter petitioner filed an application for impleadment in the revision filed by her father Mohan Singh. The said application was rejected by Additional District Judge Court No. 1 Varanasi on 21.7.2007. the said order has been challenged through this writ petition.

I do not find least error in the impugned order hence writ petition is dismissed. Revisional court has said that petitioner's status is in the nature of prospective allottee.

If the allegation of learned counsel for the petitioner that petitioner's revision is directed only against vacancy declaration order is correct then deciding revision finally revisional court should decide as to whether revision against vacancy declaration order is maintainable ?

It is quite clear that Mohan Singh and his family members including petitioner are delaying the proceedings and disposal of the revisions. There is absolutely no conflict of interest in between Mohan Singh and his sons and daughters or other relations. Both the revision have already been consolidated.

It is quite clear that revision filed by the petitioner and this writ petition are nothing but aimed at delaying disposal of revisions. The revisional court should not have granted unconditional stay order to Mohan Singh or any of his family members.

Accordingly it is directed that until decision of revision of respondent no.2 Mohan Singh his dispossession in pursuance of release order shall remain stayed provided that with effect from August 2008 onward he pays rent to the landlord at the rate of Rs.2,000/ per month. This direction is being issued in view of the fact that at least there are four rooms, one store and other amenities in the accommodation in dispute on both the floors. In case of default release order shall forthwith be executed in accordance with law. It is clarified that if stay order has been granted in more than one revision then Mohan Singh and any of his family members shall be liable to pay only Rs.2,000/ per month in total as condition of stay. This direction is being issued in view of the Supreme Court authority reported in *Atma Ram Properties vs. Federal Motors*, 2005 (1) SCC 705. In fact revisional court should have itself imposed condition while granted stay order. Revisional court should be careful in future."

3. It is alleged that despite the aforesaid order except for deposit of Rs.2000/ only on one occasion, no deposits are being made. The petitioners had earlier approached this Court for expeditious disposal through Writ Petition no. 26796 of 2009 which was disposed off vide the following order dated 22.5.2009 directing the Courts to decide the two revisions within three months :

"Heard counsel for the parties and perused the record.

It is pleaded that the petitioner was running a guest house in the disputed accommodation where the respondent no.2 was working as a paid Manager and due to employment, he was allowed to reside in a room in the said premises. However, the guest house was closed down, whereupon, the respondent no.2 made an application for allotment. The Rent Control and Eviction Officer vide his order dated 21.2.2005 declared vacancy of the said premises whereupon the respondent no.3 also applied for allotment. The petitioner, thereafter made an application for release of the said premises which was allowed in his favour vide order dated 7.3.2005.

Aggrieved, the respondent no.2 preferred Rent Revision no.23 of 2005 while respondent no.3 preferred Rent Revision no.47 of 2005. The respondent no.3 being aggrieved by rejection of her impleadment application in the revision of respondent no.2, preferred writ petition no.60228 of 2007 which was finally disposed of with a direction that she would not be dispossessed until the decision of the revision filed by the respondent no.2 vide order dated 11.8.2008. Both the revisions are consolidated but despite the fact that it was fixed on several dates, the respondents have been able to get it adjourned for one or other reasons. Thus, this petition for a mandate to the revisional authority to decide the pending revision.

In view of the aforesaid, revisional court is directed to decide the pending revision no.23 of 2005 (Mohan Singh Vs. Banwari Lal and others) and 47 of 2005 (Neelam Singh vs. Banwari Lal) expeditiously and not later than three months from the date of submission of a certified copy of this order. The Court shall also not grant adjournment except on a very pressing ground and too after imposing cost not less than Rs.500/.

Subject to the aforesaid direction, the writ petition is disposed off."

4. Now the present petition with the allegation that even though earlier transfer application preferred by the respondent nos. 3 and 4 had been rejected on 18.12.2009, after the matter had been heard and judgment reserved, another transfer application no.12 of 2010 has been filed and therefore, the judgment is not being delivered.

5. If the aforesaid facts are correct, the District Judge, Varanasi is directed to forthwith decide the transfer application within a week of the receipt of this order, provided there is no legal impediment, and in case it is rejected, the respondent no.2 shall pronounce the judgment in the revision.

6. Let a copy of this order be given to the learned counsel for the petitioner within 48 hours on payment of usual charges.

7. List for further orders on 25.5.2010.