

(2006) 05 AHC CK 0025

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16277 of 1991

Bhagwan Das and Another

APPELLANT

Vs

Rent Control and Eviction Officer/S.D.O. and Others

RESPONDENT

Date of Decision : 23-05-2006

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12(2), 16, 25, 25(2), 2A
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Amendment
Act, 1976 — Section 14
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 10(6)

Citation : (2006) 3 AWC 3087

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.U. Khan, J.—The court made efforts to compromise the matter in between the parties. However on 27.3.2006 learned Counsel for both the parties stated that compromise was out of question. Thereafter arguments were heard on 27.4.2006 and judgment was reserved.

2. This is landlord's writ petition directed against order of R.C. & E.O/ S.D.O Sambhal district Moradabad dated 30.6.1986, copy of which is annexure 9 to the writ petition which does not contain any case number. Names of the parties mentioned therein are Bhagwan Das and Ors. v. Smt. Kanti Devi and Ors.. The said order was passed on the release application u/s 16 of U.P. Act No. 13 of 1972 filed by original landlady Smt. Saraswati Devi since deceased and survived by the petitioners. In the release application, it was stated that shop in dispute was deemed vacant, as non-family members had been inducted by tenants as partner in the business carried out from the shop in dispute. R.C. & E.O. held that there was vacancy. Against the said order initially a revision was filed by the petitioner, which was allowed by II Additional District Judge, Moradabad on

25.11.1988. Order of R.C. & E.O was set-aside and it was held that there was deemed vacancy of the shop in dispute u/s 12(2) of the Act. Against order dated 25.11.1988, writ petition was filed in this Court being writ petition No. 23275 of 1988. The said writ petition was allowed on 19.2.1991 only on the ground that against order of R.C. & E.O. refusing to declare the vacancy no revision was maintainable. In view of the aforesaid decision of this Court dated 19.2.1991 order passed by R.C. & E.O. dated 30.6.1986 has been challenged through this writ petition.

3. The tenancy is continuing since long. At different times different persons have been partners of the firm, which carried out the business from the shop in dispute. Until 1974 rent notes were also executed after short intervals in between the tenants and landlady. The last rent note is of 30.11.1974 in between landlady and Mahavir Saran son of Indra Mal.

4. The main argument of landlady before R.C. & E.O. was that Mahavir Saran the tenant had inducted Dharmendra and Shital Prasad as partner in the firm which carried out the business from the shop in dispute and as they were not family members of Mahavir Saran hence there was vacancy in terms of Section 12(2) of U.P. Act No. 13 of 1972. The said section is quoted below:

Section 12(2) : In the case of a non-residential building, where a tenant carrying on business in the building admits a person who is not a member of his family as a partner of a new partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building.

5. As far as induction of Dharmendra as partner is concerned, the same can not give rise to vacancy as it has come in evidence that since the time of Indra Mal father of Mahavir Saran, tenancy is continuing. Dharmendra is also son of Indra Mal. He can not be said to be the stranger for the purposes of Section 12(2).

6. However induction of Shital Prasad as partner of the firm, if proved, will be covered by Section 12(2) of the Act. In respect of time of induction of Shital Prasad as partner of the firm, there was great divergence in the pleas taken by the opposite parties in the release application. Respondent No. 2 Smt. Kanti Devi is widow of late Mahavir Saran and respondents 3 to 9 are sons and daughters of late Mahavir Saran. Dharmendra Kumar is respondent No. 10 in the writ petition and respondent No. 11 and 12 are sons of late Shital Prasad.

7. It was repeatedly asserted by Dharmendra that the firm which carried out the business from the shop in dispute was of Joint Hindu Family firm. Admittedly Shital Prasad is not related to Mahavir Saran and Dharmendra in any manner. Dharmendra gave Oral statement also before R.C. & E.O. Sri Shital Prasad also filed written statement but he did not give any date on which he was for the first time inducted as partner. Dharmendra Kumar in his oral statement, copy of which is annexure 5 to the writ petition, firstly stated that Shital Prasad was inducted as tenant 15 or 16 years before. Thereafter he stated that through partnership deed dated 27.7.1973 which he had filed, Shital Prasad was inducted

as partner for the first time. It was also brought on record that since 13.11.1981 a new partnership by the name of M/s Indramal Mahavir Saran was created in which Shital Prasad and Dharmendra Kumar were also partners. Release application was filed on 23.11.1981. Mahavir Saran died on 13.12.1978. R.C. & E.O. held that the landlady accepted Shital Prasad and Dharmendra Kumar as partners of the firm in 1974 hence by virtue of Section 14 of the Act as amended in 1976 tenancy stood regularized. Section 14 is quoted below. -

[Section 14 : Regularization of 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 2-A) or a tenant in occupation of a building with the consent of the landlord immediately before the commencement of the Uttar Pradesh Urban Building (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.]

8. R.C. & E.O. in its judgment categorically held that Shital Prasad was partner in the firm since 1974.

9. There was a serious dispute in between the parties in respect of a notice dated 2.11.1974/8.11.1974 stated to have been given by and on behalf of the landlady. According to the landlady no such notice was ever given by her. According to the tenants the said notice was in fact given by the landlady and in the said notice landlady had admitted Shital Prasad to be the tenant, as notice was given to him also.

10. Even if it is held that landlady was aware of the fact that since 1974 Shital Prasad had been inducted as tenant, it will not make any difference. u/s 25 read with Section 12(2) of the Act, sub-tenancy of part of the building is permitted with the permission in writing of the landlord and of the District Magistrate and where the tenant ceases within the meaning of Section 12(2) of the Act to occupy the building or any part thereof, he is deemed to have sub-let the building or part. If permission in writing for subletting is necessary then oral permission is meaningless vide *Biswanath Poddar Vs. Archana Poddar and Another*, and *Gurdial Singh and Others Vs. Raj Kumar Aneja and Others*, Moreover under Rule 10(6) (a) of the Rules framed under the Act for induction of a new partner in partnership, permission of District Magistrate is necessary.

11. u/s 14 of the Act tenancy may be regularized if building has been let out without allotment order. However under the said section sub-tenancy can not be regularized. There is a difference between sub-tenancy of whole of the tenanted accommodation or part thereof on one hand and change of tenants. If the original tenant sub-lets the whole building and thereafter landlord accepts the sub-tenant as his tenant then the original tenant goes out of picture and fresh tenancy comes into existence in between the landlord and the sub-tenant who

becomes the tenant. In such situation, Section 14 may be applied. However, if no direct relationship in between landlord and sub-tenant is established and main tenant continues to be responsible to the landlord for payment of rent etc, then such sub-tenancy be that of part or whole of tenanted accommodation can not be regularized u/s 14 of the Act even if landlord is aware of the same. However, if part of the building is let out with the permission in writing of the landlord and of the District Magistrate then it is perfectly protected u/s 25(2) of the Act and in such situation neither any vacancy can arise nor there is any necessity for Regularization.

12. In view of the above even if induction of a stranger as partner is within the knowledge of landlord but without his written permission, vacancy comes into existence and tenancy of the new firm can not be regularized u/s 14 of the Act.

13. Accordingly writ petition is allowed. Judgment and order passed by the R.C & E.O dated 30.6.1986 is set-aside. It is declared that there is vacancy u/s 12(2) of the Act. R.C & E.O is directed to consider the release application of the landlord forthwith.