
(1998) 12 AHC CK 0038
In the Allahabad High Court
Case No : C.M.W.P. No. 24637 of 1991

Bishan Chand and others

APPELLANT

Vs

District Judge, Aligarh and others

RESPONDENT

Date of Decision : 14-12-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 12(1), 14, 18, 20(2)

Citation : (1999) 2 AWC 984

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : M.K. Gupta, for the Appellant; S.C., R.P. Goyal and Manish Goyal, for the Respondent

Judgement

J.C. Gupta, J.—This is landlord's petition.

2. The dispute relates to House No. 9/49 situated in Ahata Nidhan Singh, Talab Sabir Khan, Aligarh, whose previous owner was one Smt. Pratl bha Rani before the said property was purchased by the petitioners through registered sale deed dated 4.11.1981.

3. Smt. Pratl bha Rani filed S.C.C. Suit No. 876 of 1972 against her tenant Narendra Kumar alleging that the tenant has sub-let the house to Ram Kishore Gupta, the father of respondent No. 3 and husband of respondent No. 4. Ram Kishore Gupta who was impleaded as defendant No. 2 in the said suit filed written statement admitting the ownership of Smt. Pratl bha Rani. However, his defence was that the house in question was taken on rent on behalf of joint Hindu family and he being a member of the family also became a tenant of the plaintiff Smt. Pratl bha Rani and, therefore, there has been no sub-letting and suit for eviction was liable to be dismissed.

4. During the pendency of the aforesaid suit, the respondent No. 3 moved an application before the Rent Control and Eviction Officer purporting to be u/s 14 of

the U. P. Act No. XIII of 1972, (hereinafter referred to as the "Act") with the prayer that her occupation be regularised. The said application of respondent No. 3 was allowed by the R, C, and E. O. by the order dated 25.9.1973. Thereafter, she was impleaded as defendant No. 3 in abovementioned S.C.C. Suit NO. 876 of 1972, wherein she also filed her written statement admitting Smt. Pratibha Rani as her landlady and owner of the house in question but claimed herself to be sole tenant on the basis of the order of regularisation of occupation made in her favour by the R. C. and E. O.

5. It appears that during the pendency of the said suit, on 21.6.1983 one Rajertdra Kumar respondent No. 5 applied before the Rent Control and Eviction Officer for allotment of the disputed house in his favour with the allegation that Narendra Kumar. the sitting tenant has illegally allowed Dr. Mrs. Vijaya Gupta-respondent No. 3 to occupy the said house though she was not a member of his family and thus under the provisions of the Act, the house should be deemed vacant. On this application Case No. 118 of 1983 was registered. Notice was issued to respondent No. 3 who filed her objection alleging, inter alia, that since her occupation has been regularised u/s 14 of the Act and she was a lawful occupant, there was no question of any vacancy and accordingly, application for allotment was liable to be rejected. Copy of the said objection has been annexed as Annexure-1 to the writ petition. The Rent Control Inspector was ordered to make inspection but the same was not permitted to be made by the sister of respondent No. 3. The Rent Control and Eviction Officer by the order dated 11.1.1985 after considering the objection of respondent No. 3 declared vacancy with respect to the house in question. Copy of the said order has been annexed as Annexure-8. The R. C. and E. O., while declaring vacancy held that Narendra Kumar was the original tenant who permitted respondent No. 3 to occupy the house in question against the provisions of the Act and, therefore, there stood created deemed vacancy. Thereafter, the respondent No. 3 filed further objection on 20.1.1985 stating therein that the order dated 11.1.1985 was ex parte and the matter be decided afresh, copy of the said objection has been annexed as Annexure-9. In the meantime, on 22.4.1985 the respondent No. 4. the mother of respondent No. 3 and widow of Ram Kishore Gupta filed application before the R. C. and E. O. slating that as she has perfected her title by adverse possession and has become owner of the house in question, the same be released in her favour. Copy of the said application has been annexed as Annexure-10 to the writ petition. It was also stated in the said application that Smt. Pratibha Rani was herself not the owner of the house in question, hence the petitioners also did not acquire any title on the basis of sale deed executed by Pratibha Rani in their favour. In the meantime. Rani Kishore Gupta had died and the respondent No. 4 was also brought on record of the aforesaid S.C.C. Suit. In the affidavit filed by respondent No. 4, it was stated by her that her husband Ram Kishore Gupta was ill and mentally infirm and. therefore, was not capable of understanding the" litigation and her daughter, the respondent No. 3, was also not aware of full facts and, therefore, she could not place correct facts before the authorities. As a

matter of fact she and her husband were in continuous unauthorised occupation of the house in question for more than 12 years and have thus perfected their title by adverse possession. To this, the petitioners filed objections stating that the release application moved by respondent No. 4 was vexatious and frivolous as all throughout they have been claiming tenancy rights and their predecessor Ram Kishore Gupta had also in clear words admitted the relationship of landlord and tenant with Smt. Pratibha Rani and accordingly, they were estopped from claiming title in themselves. It was also pleaded by the petitioners that respondent No. 3 had also admitted the said relationship and further claimed regularisation. of her occupation by moving an application before the R. C. and E. O. and in these circumstances, there was no question of perfection of title by adverse possession. By the order dated 27.9.1985. the respondent No. 2 passed a detailed order whereby the release application moved by respondent No. 4 was rejected on the ground that the same was not maintainable as till the date of declaration of vacancy, she and her other family members had been claiming themselves as tenants and, therefore, they were estopped from setting up title in themselves. By the order dated 6.12.1985. the respondent No. 2 allowed the released application of the petitioners after duly considering the objections of respondent Nos. 3 and 4.

6. Before the District Judge, three revisions u/s 18 of the Act were filed. Revision No. 82 of 1985 was filed by respondent No. 3 and it was against the order dated 6.12.1985 whereby the house in question was released in favour of the petitioners. Respondent No. 4 filed two revisions, viz.. No. 69 of 1985 against the order dated 11.1.1985 declaring vacancy and the order dated 27.9.1985 rejecting her release application, whereas Revision No. 7 of 1986 was filed against the order dated 6.12.1985 releasing the accommodation in question in favour of the petitioners. All the three revisions have been decided by a common judgment dated 15.5.1991 by respondent No. 1, who has allowed them and has remanded the case to the R. C. and E. O. with a direction to proceed with the case according to direction made in the body of the judgment. The direction contained in paragraph 12 of the Judgment of respondent No. 1 is reproduced as under :

"He should wait for the result of Suit No. 476 of 1972. In case the regularisation order dated 25.9.1973 passed in favour of Dr. Mrs. Vijay Gupta is set aside, the R. C. and E. O. should proceed to determine if it is a case of deemed vacancy. If it is found that it is the case of deemed vacancy, he should ascertain as to who has been held to be landlord of the disputed accommodation in S.C.C. Suit No. 476 of 1972. If Smt, Pratibha Rani is found to be landlady of this premises by the J.S.C.C. In the abovementioned suit, Bishan Chand, Smt. Kanti Devi and Smt. Uma Devi having stepped into the shoes of Smt. Pratibha Rani, would be entitled to move release application and R. C. and E. O. should consider their claim. Side by side the claim of Rajendra Kumar. Veerpal and Om Prakash Sharma and others who have applied for allotment of this premises, should also be considered. Having done so. It will be open to R. C. and E. O. to pass order of

release or allotment, as the case may be. The claim of Smt. Sheela Devi regarding ownership of the premises need not be determined by the R. C. and E. O. If she is found to be landlady, naturally her claim will be considered, otherwise her claim is to be rejected outright."

7. In the counter-affidavits filed before this Court on behalf of the respondent Nos. 3 and 4, most of the facts narrated above have not been disputed. However, it has been alleged that the S.C.C. Suit No. 876 of 1972 was in respect of & different property and not the disputed house. According to the stand now taken up in the counter-affidavit, the subject matter of Suit No. 876 of 1972 is House No. 9/75 and the order of regularisation of tenancy in favour of respondent No. 3 was also in respect of the same premises, while the proceedings giving rise to this writ petition related to another house bearing No. 9/49. In other words, their case is that the proceedings for vacancy and release related to the disputed house, while the S.C.C. Suit and the proceedings for regularisation of occupation were in respect of another house No. 9/75. The other defence is that the respondent No. 4 has perfected her title by adverse possession and. therefore, her claim for release should have also been considered by the R. C. and E. O. and the application of release moved by the petitioner was not maintainable.

8. Sri M. K. Gupta who appeared for the petitioners and S./Sri R. P. Goyal and Manish Goyal who appeared for the contesting respondents were heard at length. Record has also been perused.

9. Sri M. K. Gupta, learned counsel for the petitioners contended that the order of the revisional court is wholly unjustified, illegal and without jurisdiction. It was argued that while examining the legality of the order dated 6.12.1985. the revisional court had no jurisdiction to go into the question of declaration of vacancy nor the said order could be challenged by respondent No. 4 as the same had become final and could not be reagitated subsequently in the revisions filed against the order of release made in favour of the petitioners or against the order rejecting the release application of the respondent No. 4. It was further argued that the revisional court has committed a manifest error of law in remanding the case to the R. C. and E. O. on untenable grounds that on account of pendency of S.C.C. Suit No. 876 of 1972, the R. C. and E. O. had no power to declare vacancy or to release the house in question in favour of the petitioners. Sri Gupta submitted that proceedings for declaration of vacancy and release are independent proceedings and were not dependent upon the result of the suit filed by the petitioners on Small Cause Court's side. It was also contended on behalf of the petitioners that the holding of respondent No. 1 that since there were counter claims regarding the ownership of the house in question, the R, C. and E. O. should have waited for the result of the aforesaid suit is manifestly erroneous and illegal. It was further argued by the learned counsel for the petitioners that the order dated 25.9.1973 of the R. C. and E. O. regularising occupation of respondent No. 3 u/s 14 of the Act was a nullity and without jurisdiction, therefore, such an order could not be treated as an impediment or hurdle in the

exercise of power by the R. C. and E. O. while declaring vacancy under the provisions of the Act. firstly, for the reason that as per the case taken up before this Court by the respondents, the said order did not relate to the house in question. Secondly, the said order was void ab initio ; and thirdly, no benefit of Section 14 could be claimed by the respondents in view of the averments made in the counter-affidavits and in the-affidavit dated 8.7.1985 filed before the R. C. and E. O. that the respondents were in continuous unauthorised occupation and the respondent No. 4 and her husband had perfected their title by adverse possession because no unauthorised occupant can claim benefit of the aforesaid provision. As far as the counter claim of title set up by respondent No. 4 by adverse possession is concerned, it was argued by the petitioners' counsel that she as well as respondent No. 3 were estopped in law from taking such a plea as there was a clear admission of Ram Kishore Gupta. the predecessor of the respondents as well as of respondent No. 3 herself in the aforesaid S.C.C. Suit that Smt. Pratibha Rani was the owner and landlady of the premises in question and since the petitioners have stepped in the shoes of Smt. Pratibha Rani, their title could also not be disputed by the said respondents. In short, the argument is that on account of the aforesaid admissions made by Ram Kishore Gupta and the respondent No. 3 herself, both the respondents cannot legally set up title in themselves because no tenant can claim adverse possession against his landlord. As regards the plea of the respondents that the S.C.C. Suit and the proceedings for regularisation were in respect of some other house than the house in question, it was contended by the learned counsel for the petitioners that this plea has been taken for the first time in the present writ petition with an oblique motive and under a legal advice as there was no other way to overcome the admissions made in the aforesaid proceedings by the respondent No. 3 and the predecessor of respondent No. 4.

10. On the other hand, learned counsel for the respondents contended that the revisional court had the jurisdiction to go into the question of vacancy as the said question was sine qua non of exercise of jurisdiction for making an order of release or allotment as the case may be. It was also argued that Smt. Sheela Devi. the respondent No. 4 has asserted herself to be the owner and landlord of the house in question and the respondent No. 3 had also claimed herself to be in regular occupation of the house in question the order of vacancy could not be passed without hearing them. Learned counsel further tried to support the impugned order by submitting that since there was a bona fide dispute of title, the matter has rightly been left for the decision by civil court as the R. C. and E. O. had no power to go into the rival claims of the parties with regard to the title of the house in question. It was also argued that the so-called admissions of respondent No. 3 and Ram Kishore Gupta were in relation to other house and not the house in question. Finally it was argued that the High Court in the circumstances of the case, should not interfere with the impugned order of remand.

11. After examining the record and giving thoughtful consideration to the entire

matter, this Court finds that the order of the revisional court remanding the case to the R. C. and E. O. Is not sustainable and for reaching to this conclusion. I now proceed to give my reasons.

12. While setting aside the order of the R. C. and E. O. declaring vacancy, the revisional court took the view that on account of pendency of S.C.C. Suit No. 876 of 1972, the R. C. and E. O. had no power to declare vacancy or to release the house in question in favour of the petitioners. This view of the learned Judge is wholly illegal and untenable as it is now well-settled law that proceedings u/s 12 or Section 16 of the Act are separate proceedings and may go on Independently and simultaneously along with suit for eviction filed in civil court. The revisional court also committed a manifest error in holding that the R. C. and E. O. should have waited for the decision in the aforesaid S.C.C. Suit. In support of my conclusion, a reference may be made to the following decisions.

13. in Ravi Shanker v. Additional District Judge, IInd Kanpur and others, 1979 ARC 273. suit for eviction on the ground of sub-letting was pending but before the said suit could be decided, an application for allotment was made u/s 12 (1) read with Section 16 of the Act. It was urged before this Court that so long as suit filed by the landlord was pending, application for allotment was not legally maintainable. This contention was, however, repelled by the learned single Judge who decided the aforesaid decision and it was held that on an illegal sub-letting taking place, two courses are open under law. A landlord is entitled to bring a suit for ejectment u/s 20 (2) (e) and on the ground of clause (b) of Section 12 (1) of the Act. an application for allotment/release can also be made. The two proceedings can go simultaneously or could be taken one after the other. Similar view was expressed in the case of Jaswant Singh v. Additional District Judge. Delwadun and others. 1993 (2) ARC 91, wherein it was held that the pendency of suit filed by the tenant seeking declaration of his title on the strength of adverse possession can proceed unaffected by the order of vacancy and release as in such proceedings the question of title was neither warranted nor there was any occasion to determine the same. Reference may also be made to the case of Subhash Chandra Bhatnagar v. VIIIth Additional Civil Judge, Meerut and another 1993 (2) ARC 171.

14. In view of the aforesaid legal position, this Court finds that the revisional court acted illegally in exercise of its jurisdiction in holding that on account of pendency of suit for eviction on S.C.C. side, the R. C. and E. O. had no power to order declaration of vacancy.

15. The perusal of impugned order further reveals that the revisional court was of the view that since there was a serious dispute with regard to ownership of the house in question between the petitioners and the respondent No. 4 who was claiming title in herself by adverse possession, and unless the question of title was finally decided in the S.C.C. Suit, the R. C. and E. O. had no jurisdiction to declare vacancy or to make the order of release in favour of the petitioners. The learned revisional Judge has further opined that the R. C. and E. O. had no

power to consider the question of ownership of Smt. Pratibha Rani as it was foreign to its consideration while dealing with the matter of vacancy and release and according to him the only question which the R. C. and E. O. should have considered was as to who was the landlord. He proceeded to observe, "if the J.S.C.C. finds that Smt. Pratibha Rani was the landlady of the disputed premises, naturally Bishan Chand, Smt. Kanti Devi and Smt. Uma Devi would become landlord by transfer and as such would be entitled for moving release application. In case it is found by the J.S.C.C. that Smt. Pratibha Rani is not the landlady of this premises, obviously these three persons being transferee of Smt. Pratibha Rani, would have no right to move the release application "According to the learned Judge, the R. C. and E. O. ought to have followed the following procedure :

"He should wait for the result of Suit No. 476 of 1972. In case the regularisation order dated 25.9.1973 passed in favour of Dr. Mrs. Vijaya Gupta is set aside, the R. C. and E. O. should proceed to determine if it is a case of deemed vacancy. If it is found that it is the case of deemed vacancy, he should ascertain as to who has been held to be landlord of the disputed accommodation in S.C.C. Suit No. 476 of 1972. If Smt. Pratibha Rani is found to be landlady of the premises by the J.S.C.C. In the abovementioned suit, Bishan Chand. Smt. Kanti Devi and Smt. Uma Devi having stepped into the shoes of Smt. Pratibha Rani, would be entitled to move release application and the R. C. and E. O. should consider their claim. Side by side the claim of Rajendra Kumar. Veerpal and Om Prakash Sharma and others who have applied for allotment of this premises, should also be considered. Having done so. It will be open to R. C. and E. O. to pass order of release or allotment, as the case may be. The claim of Smt. Sheela Devi regarding ownership of the premises need not be determined by the R. C. and E. O. If she is found to be landlady, naturally her claim will be considered, otherwise her claim is to be rejected outright."

16. From the above observation, it would thus appear that in the matter of declaration of vacancy, the first hurdle, which the learned Judge found, was the order dated 25.9.1973 whereby the application of respondent No. 3 moved u/s 14 of the Act regularising her occupation was allowed and the learned Judge was of the view that unless the said order was set aside in the S.C.C. Suit, the R. C. and E. O. should not have proceeded to determine the question of declaration of vacancy because the legal impact of the said order was yet to be considered in the S.C.C. Suit.

17. Learned counsel for the petitioners Sri M. K. Gupta vehemently argued that this view of the revisional court is patently illegal and grossly erroneous because the order dated 25.9.1973 of the R. C. and E. O. regularising the occupation of the respondent No. 3 was a non-est order being void ab initio and without jurisdiction and, therefore, should have been ignored from consideration. It has also been pointed out by the learned counsel for the petitioners that Sri S. A. Khan, Advocate who was appearing as counsel for respondent No. 4 and after

her death has also filed his Vakalatnama on behalf of respondent No. 3 made a statement at the bar that the aforesaid order of regularisation in favour of the respondent No. 3 was in respect of another premises and not the premises in dispute. In view of the said statement, which has been recorded on the order-sheet of the Court proceedings, it does not lie in the mouth of the respondents to claim any benefit of the said order of the R. C. and E. O. dated 25.9.1973. Even otherwise also, the aforesaid order is wholly without jurisdiction in view of various pronouncements of this Court.

18. A Division Bench of this Court in the case of *Mirza Samiullah Baig v. District Magistrate, Lucknow and other* 1979 (5) ALR 449. held as under :

"Section 14, does not confer jurisdiction either on the District Magistrate or even the Prescribed Authority or entertain any proceeding for the purpose merely of making a declaration u/s 14 of the Act. It declares the legal position, of which any person may claim benefit in appropriate proceedings by way of defence or otherwise. The scheme of the Rent Control Act is that it confers certain functions on the District Magistrate. The District Magistrate or any other officer authorised by him as well as the Prescribed Authority constituted under the said Act are all authorities with limited jurisdiction only in respect of matters for which express provision has been made in the Act. They are not Courts of general jurisdiction so as to entitle them to entertain proceedings for which no power or jurisdiction has been conferred on them. Section 14 is a provision under which no provision has been made to empower either the District Magistrate or the Prescribed Authority to entertain proceedings only to make a declaration."

19. Again in the case of *Shri Zarif Ahmad v. Rent Control and Eviction Officer, Ghaziabad and another* 1980 ARC 581, another Division Bench of this Court accepted the law laid down - in the aforesaid decision of *Mirza Samiullah Baig* and held that it must be accepted that no application could be filed u/s 14 of the Act either for regularisation of possession or for obtaining declaration of tenancy and it would follow that the entire proceedings before the authority concerned were without jurisdiction and nothing contained in that judgment can effect interest of either party in any manner whatsoever.

20. Similarly, in the cases of *Narendra Singh Sirohi and another v. R. C. and E. O., Meerut and others* 1982 (1) ARC 250 and *Smt. Barfi Devi and others v. Additional Civil Judge, Bulandshahar and another* 1982 (1) ARC 796, it was held that the R. C. and E. O. has no jurisdiction to make a declaration u/s 14 of the Act as the said section does not confer any such power upon any authority to grant such a declaration nor does it provide for grant of such declaration. The declaration granted by the R. C. and E. O. is illegal and without Jurisdiction. Similar view was expressed in another case of *Virendra Kumar and others v. S. P. Singh and another* 1982 (1) ARC 263.

21. In the case of *Smt. Prem Devi Nigam v. Rent Control and Eviction Officer, Bareilly and another* 1984 (2) ARC 652, it was held that an order declaring a

person as tenant in an application moved u/s 14 of the Act is without jurisdiction because R. C. & E. O. has no jurisdiction to grant any such declaration and, therefore, the said order cannot stand as an impediment in the way of the plaintiff in prosecuting her suit for eviction filed against the tenant.

22. In the present case, undisputedly when respondent No. 3 moved application u/s 14 of the Act for regularisation of her occupation, S.C.C. Suit No. 876 of 1972 filed by Smt. Pratibha Rani against Narendra Kumar and his subtenant Ram Kishore Gupta. the father of respondent No. 3. was already pending. Apart from the fact that no such application was legally maintainable and the proceedings held by the R. C. and E. O. were null and void. Section 14 had no application as suit for eviction was already pending against the predecessor of respondent No. 3, since before the commencement of the Act. It may also be relevant to mention here that there was no proof before the R. C. and E. O. either of express or implied consent of the landlady Smt. Pratibha Rani accepting respondent No. 3 as her tenant. It is pertinent to note here that in the affidavit filed before the R. C. and E. O.. the respondent No, 4 in paragraph 3 averred that she and her husband came into "continuous unauthorised occupation" of the house in dispute. In view of the above averment, there could arise no question of extending any benefit u/s 14 of the Act as no unauthorised occupant can claim benefit of Section 14 of the Act. Therefore, in my considered opinion. the holding of the revisional court that unless the order of the R. C. and E. O. dated 25.9.1973 regularising occupation of respondent No. 3 was set aside in S.C.C. Suit, the R. C. and E. O. had no power to declare vacancy was wholly illegal and patently erroneous.

23. It may further be added that the order of vacancy dated 11.1.1985 had never been challenged by the respondents by filing writ petition or other proceedings and the said order became final. It has rightly been submitted by the learned counsel for the petitioner that in revisions filed u/s 18 of the Act, it was not permissible to reagitate the matter of declaration of vacancy and reliance was placed on the Supreme Court decision in Ganpat Roy and Others Vs. Additional District Magistrate and Others, , wherein it was observed as under :

"The scheme of the Act would show that a tenant of premises in whose case it is found that there is a deemed vacancy has no efficacious or adequate remedy under the Act to challenge that finding. A petition under Article 226 or 227 of the Constitution filed by such a tenant in order to challenge that finding cannot, therefore, be said to be premature."

24. It was further held that it is doubtful whether a tenant whose objections to notification of a deemed vacancy have been negated and thereafter the vacancy has been ordered to be notified could be permitted to reagitate the same contentions because such contentions would be barred by principles analogous to res judicata. In such an event, it would be difficult "to say that he can exercise his right of review on the ground that there was no vacancy. This would apply equally where an order of release is made. Further, the revision

which is provided for under. Section 18 is against an order of allotment or release and not against notifications of vacancy and an issue, which was concluded earlier and on the basis of the finding on which the District Magistrate had proceeded to allot or release the premises, cannot be re-agitated in revision.

25. From the aforesaid decision, it follows that when an order of declaration of vacancy is made after considering the case of the respective parties, the said order is not open to challenge in revision filed u/s 18 of the Act against the order of allotment or release as the case may be. From the side of the respondents, however, reliance was placed on two decisions of this Court *Ravindra Pratap Singh v. VIIth Additional District Judge, Varanasi and others* 1997 (1) ARC 264 and *Mahendra Kumar Tripathi v. Additional City Magistrate, Kanpur Nagar and others* 1998 (1) ARC 152, wherein a learned single Judge of this Court held that the question of vacancy being a jurisdictional question can also be examined by the revisional court, whenever, the matter is taken to it against final order of release or allotment, as the case may be u/s 18 of the Act. The decision in *Mahendra Kumar Tripathi* was challenged before the Apex Court which reversed the said decision in the case of *Naravani Devt v. Mahendra Kumar Tripathi and others* 1998 (1) ARC 153.

26. The next ground on which the order of release made by the R. C. and E. O. has been set aside by the revisional court is that the question as to who is the landlord /landlady of the premises in question was to be finally decided in S.C.C. Suit No. 474 of 1972 and. therefore, unless it was decided in the aforesaid suit that Smt. Pratibha Rani was the landlady of the house in question, no release order could have been made in favour of the petitioners as they have simply stepped in the shoes of Smt. Pratibha Rani by means of a sale deed in their favour. While taking this view, the learned revisional Judge completely overlooked an important fact that in the written statement filed in the aforesaid S.C.C. Suit, Ram Kishore Gupta, the predecessor of respondent Nos. 3 and 4 in clear and unequivocal terms had admitted the title of Smt. Pratibha Rani and there was no dispute regarding her being the landlady of the house in question. In view of the said admission of Ram Kishore Gupta. his successors respondent Nos. 3 and 4 were estopped from denying the title of Smt. Pratibha Rani as under law, no tenant can set up title to himself by adverse possession so long as the relationship of landlord and tenant continues. It is well-settled law that an admission made by a party to the suit is best piece of evidence which can be used against him and unless the said admission is satisfactorily explained, the facts stated in the admissions are presumed to be true. In the case of *Smt. Urmila Devt and others v. IInd Additional District Judge, Meerut and others*. 1998 (2) ARC 6, I had the occasion to examine similar question and it was held that admission made by a party or his agent in earlier judicial proceedings is binding upon the party in subsequent proceedings and can be relied upon for proving the truth incorporated therein and such an admission has the effect of shifting the onus of proving to the contrary on the party against whom it is produced and in the absence of a satisfactory explanation, it is presumed to be true. In the

present case, as already stated above, there was a clear admission of Ram Kishore Gupta contained in paragraphs 1, 8 and 9 of the written statement filed by him in S.C.C. Suit No. 876 of 1972 whose copy has been annexed as Annexure-2 to the writ petition. The admission was that Smt. Pratibha Rani was the owner and the landlady of the property in dispute. Even Dr. Mrs. Vijaya Gupta, the respondent No. 3 in her written statement had admitted that Smt. Pratibha Rani was the owner and landlady of the house in question. Smt. Sheela Devi was substituted in the said suit after the death of Ram Kishore Gupta as his heir and legal representative and, therefore, she was also bound by the admission made earlier by her husband Ram Kishore Gupta through whom she was claiming her right and title. It may also be noted here that the respondent No. 3 in her objections dated 19.10.1983 filed against the application for allotment and whose copy has been annexed as Annexure-1 had also admitted herself that she was in occupation of the house in question as tenant of Smt. Pratibha Rani. Similarly, in her application moved u/s 14 of the Act. the title of Smt. Pratibha Rani was not disputed rather she claimed to be in lawful occupation on behalf of Smt. Pratibha Rani. After these admissions, which were made in plain, clear and unequivocal words, it was not open to the respondent Nos. 3 and 4 either to deny the title of Smt. Pratibha Rani or their successors. I.e., the present petitioners or to claim title in themselves by pleading that they have perfected their title by adverse possession. Faced with this difficult and unsurmountable situation, the petitioners before this Court took up altogether a new case that the S.C.C. Suit as well as the proceedings for regularisation of occupation were in respect of other property than the house in respect of which the proceedings for declaration of vacancy and release were held before the R. C. and E. O. No such case was ever pleaded or pressed either before the R. C. and E. O. or the revisional court and it is for the first time that before this Court, this new plea has been raised which in the circumstances of the case, appears to have been motivated. Even otherwise also, it would appear that all along the proceedings before the authorities below, it has not been disputed, rather it was an admitted position that the S.C.C. Suit and the proceedings held by the R. C. and E. O. were in respect of one and the same property. It was argued from the respondents' side themselves before the revisional court that the order of regularisation was in respect of the property which was the subject matter of S.C.C. Suit and on the basis of the said submission, the revisional court proceeded on the parameter that the house which has been declared vacant and released in favour of the petitioners was the subject matter of S.C.C. Suit and, therefore, in the opinion of the revisional court, unless the S.C.C. Suit was decided, the R. C. and E. O. should not have declared vacancy. Even in the memo of revision whose copy has been annexed as Annexure A. A-3, no such ground was taken from the side of the respondents. A perusal of the Judgment of the revisional court leaves no room of doubt that it was admitted to both the parties that the S.C.C. Suit and the proceedings for declaration of vacancy were in respect of one and the same premises. To me, it appears that in order to wriggle out from the admissions made by Ram Kishore Gupta as well as

respondent No. 3 and to create confusion, a new plea is now being raised before the Court that the proceedings of S.C.C. Suit and declaration of vacancy were in respect of separate premises and in the circumstances, such a plea being an afterthought and motivated cannot be allowed to be raised for the first time in this writ petition. Even if the said plea is examined, the same is not sustainable inasmuch as in paragraph 13 of the supplementary rejoinder-affidavit filed in reply to supplementary counter-affidavit, it has been clearly stated by the petitioners that there is only one property which is in possession of respondent No. 3 and there is no other property in their possession in Mohalla Ahata Nidhan Singh, Talab Sabir Khan, Aligarh. Respondents have failed to point out as to which is the other house in respect of which S.C.C. Suit No. 876 of 1972 is pending. The boundaries of the disputed house as given in the sale deed (copy of which has been annexed as Annexure-1 to the supplementary counter-affidavit), in the release application of the petitioners (Annexure-17) and in the release application of respondent No. 4 (Annexure-11) are practically the same. The material placed on record leaves no room of doubt that both the proceedings regarding declaration of vacancy and of S.C.C. Suit related to one and the same property which is also the subject-matter of this writ petition, and therefore, the new plea raised before this Court must be rejected.

27. It was then next argued by the learned counsel for the contesting respondents that the revisional court has simply remanded the case to the R. C. and E. O. for making a fresh decision in the light of the observations made in the body of the judgment and this Court in exercise of its writ jurisdiction should not make interference in the order of remand. This submission of the learned counsel for the respondents, in the peculiar circumstances of the present case, has to be rejected. In the case of *Ganeshi Ram alias Tola Ram v. 1st Additional District Judge, Dehradun and others*, 1990 (2) ARC 280, it was held that the Court has a discretion in the matter of remand and it is not duty bound to remand a case. The discretion, however, is not arbitrary and is to be exercised on sound judicial principles. The general principles about remand are that the power cannot be exercised rightly and on mere asking because it affects the parties. The power of remand is required to be exercised with caution and sparingly. Ordinarily, a remand of a case may be justified where a Court after examination of the material already placed on record by way of evidence comes to conclusion that it is not possible for it to make a final order without the help of some other evidence which is not on the record and without a clear finding by the authority from whose order the proceedings before it had arisen. When there is sufficient evidence already on record having bearing on the Issue for consideration, the Court is not precluded from going into the merits of the question arising in the case and to decide it finally in one way or the other. Learned counsel for the petitioners relying upon the decision of a learned single Judge of this Court in the case of *Wand Kishore Tripathi v. District Judge, Shahjahanpur and others* 1994 (1) ARC 254, argued that in the present case, there was neither any necessity nor justification for remanding the case to the R. C. and E. O. as there was

sufficient material on record for upholding the order of the R. C. and E. O. The revisional court acted beyond its jurisdiction in entering into the question of declaration of vacancy as the matter regarding declaration of vacancy was not open to challenge u/s 18 of the Act as has been held by the Apex Court. Apart from this, the revisional court proceeded on. an absolutely Irrelevant and wrong parameter that unless the order of regularisation made in favour of respondent No. 3 was set aside in the S.C.C. Suit pending between the parties, the R. C. and E. O. had no Jurisdiction to declare vacancy, without bearing in mind that under the provisions of the Act, the application moved by respondent No. 3 for making a declaration u/s 14 of the Act regarding regularisation of her occupation was legally not maintainable and the order made in such proceedings was a nullity and non-est and was to be ignored from consideration having no legal sanctity. The revisional court further exceeded its jurisdiction in holding that unless the title of Smt. Pratibha Rani in the aforesaid S.C.C. Suit was established, no release order could have been made in favour of the petitioners by totally ignoring the material which was placed on record in the form of clear admissions made by the predecessor in Interest of the respondents, namely. Ram Kishore Gupta and also of respondent No. 3 herself that Smt. Pratibha Rani was admittedly the owner and landlady of the house in question and the petitioners' title could also not be disputed as they are transferee by virtue of a sale deed in their favour. The revisional court further failed to note the legal position that under law, a tenant could not claim perfection of title by adverse possession against his landlord and since the pendency of suit was no impediment in the declaration of vacancy and in releasing the house in question in favour of the petitioners, the remand of the case to the R. C. and E. O. for waiting for the decision of S.C.C. Suit was wholly uncalled for and erroneous in law as the pendency of S.C.C. Suit could not have any effect on the jurisdiction of the R. C. and E. O. In declaring the property in question vacant and subsequently releasing the same in favour of the petitioners. Accordingly. the impugned order passed by the revisional court cannot be sustained and is hereby set aside and the orders of the R. C. and E. O. declaring vacancy and releasing the house in question in favour of the petitioners and rejecting the application of release made by Smt. Sheela Devi are restored.

28. For the foregoing discussion and reasons assigned above, the writ petition is allowed.

29. In the circumstances, parties are directed to bear their own costs.