

(1977) 09 AHC CK 0034

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6788 of 1974

Brij Mohan Chaturvedi

APPELLANT

Vs

X Addl. Dist. Judge and Others

RESPONDENT

Date of Decision : 01-09-1977

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 14, 16, 18

Citation : AIR 1978 All 36

Hon'ble Judges : M.P. Saxena, J

Bench : Single Bench

Advocate : L.N. Pandey and R.R. Agarwal, for the Appellant;

Final Decision : Allowed

Judgement

M.P. Saxena, J.—This writ petition is directed against the order dated 30-10-1974 passed by X the Additional District Judge, Allahabad.

2. The opposite parties Nos. 2 to 5 are the owners and landlords of house No. 134 situate in Alopibagh in the city of Allahabad. One Sri Durga Prasad Tiwari was a tenant of this house. According to the landlords Sri Brij Mohan Chaturvedi, the petitioner, began to live with Sri Tiwari and when they enquired about it Sri Tiwari gave out that Sri Chaturvedi being his relation, was staying with as a guest and would vacate the house when suitable accommodation was available to him. This position went on for some time and the landlords received rent from Sri Tiwari up to 30-6-1972 and they issued receipts for the same. Thereafter Sri Tiwari vacated the house without information to the landlords and inducted Sri Chaturvedi as a sub-tenant illegally but in the eye of law the house will be deemed to have fallen vacant in the month of July 1972.

The landlords at first gave a notice to Sri Chaturvedi to vacate the house and on his failure to do so moved an application on 24-4-1973 u/s 16 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (hereinafter referred to

as the Act) for release of this house on the ground that they bona fide require it for their own use. According to them, their family consists of 19 members and the house in their possession is not sufficient to accommodate them. Therefore, they have decided to shift one of the owners, namely, Sri H. S. Bose and members of his family to the disputed house.

3. Sri Chaturvedi, the petitioner, contested that application, inter alia, on the grounds, that there is no vacancy inasmuch as Sri Tiwari had vacated this house in the year 1963 and since then he is living in it as a tenant with the consent of the landlords on a monthly rent of Rs, 30 which was later on raised to Rs. 35. The rent was regularly paid till June 1972 but the landlords did not issue any receipt. He also deposited the house and water tax in respect of this house. After the new Act came into force his possession became that of an authorised tenant by virtue of Section 14 and he insisted on having receipts in respect of the payment of rent. When the landlords showed unwillingness he remitted the rent by money order on 1-12-1972 but it was refused. In these circumstances the house never fell vacant and the application u/s 16 of the Act was not maintainable.

4. Neither party filed any affidavit but the petitioner filed a number of documents to substantiate his contention of possession since 1963.

5. The Prescribed Authority found favour with the contentions of Sri Chaturvedi and rejected the release application on the ground that there was no vacancy.

6. The Landlords filed an appeal u/s 18 of the Act and the learned Additional District Judge, Allahabad, came to the conclusion that Sri Chaturvedi is an unauthorised occupant inasmuch as the landlords never consented to take him as a tenant nor accepted rent from him. He was of this view on the ground that the landlords never gave any written consent nor issued any receipt to Sri Chaturvedi and the latter being ,a lawyer practising in the High Court, would not have paid rent without taking receipt. According to him, the petitioner's possession in this house will not necessarily amount to consent on the part of the landlords. He accordingly passed the following impugned order :

"The appeal is allowed with costs. The order dated 15-10-1973 rejecting the release application is set aside. It is hereby declared that the house in question is deemed to be vacant and is available for release or allotment u/s 16 of the Act. The Rent Control and Eviction Officer shall now decide the release application on merits."

Sri Chaturvedi has now filed this writ petition for quashing the aforesaid order mainly on the ground that the learned Additional District Judge committed manifest error of law by completely ignoring the material on the record and giving perverse finding that vacancy has taken place.

7. The learned counsel for the opposite parties has raised a preliminary objection that the impugned order merely declares vacancy and the writ petition against it

is legally not maintainable. Reliance has been placed on the cases of Ram Lal v. Rent Control and Eviction Officer, Saharanpur (1976 All LJ 76) and Tirlok Singh and Co. Vs. District Magistrate, Lucknow and Others, .

8. I have heard the learned counsel for the parties at length and have given my anxious consideration to the whole matter. The cases relied upon by the opposite parties no doubt lay down that an order declaring vacancy is merely an interlocutory order which does not prejudice the rights of any one and the writ petition challenging notification of vacancy is premature and not maintainable but the facts of these cases were entirely different and the said principle cannot be applied to the instant case.

In the case of Ram Lal v. Rent Control and Eviction Officer (1976 All LJ 76) (ibid) two questions arose before the Prescribed Authority. Firstly, whether the shop in dispute was covered by the provisions of the new Act and, secondly, whether the same was vacant for allotment. The Rent Control and Eviction Officer came to the conclusion that the shop came within the purview of the Act. He further directed that the vacancy be notified and applications for allotment be invited. Obviously he had not allotted the premises by the said order. An appeal u/s 18 was filed which was dismissed on the ground that it was not maintainable. Thereafter a writ petition was filed in this Court and it was held that the order passed by the Prescribed Authority being of an interlocutory nature appeal and writ petition were not maintainable against it.

9. In Tirlok Singh and Co. Vs. District Magistrate, Lucknow and Others, the landlords filed an application u/s 16 (1) (b) of the new Act for the release of certain residential premises. Trilok Singh and Co. claimed to be its tenant. The Rent Controller directed a Senior Inspector to inspect the premises and make a report. Accordingly the Senior Inspector inspected the premises and submitted a report stating :

"After hearing the parties it would be proper to take further action."

10. He seems to have found three persons in possession of the premises two of whom claimed to be the partners of the firm Trilok Singh and Co. On receipt of the report the Rent Controller passed the following order :

"Let the vacancy be notified."

Trilok Singh and Co. challenged the said order by means of a writ petition in this Court. It was summarily rejected on the ground that it was premature and the proper remedy for the petitioners was to approach the Rent Controller u/s 16 (5) for review of the order directing that the vacancy be notified. Trilok Singh filed an appeal by special leave before the Supreme Court and their Lordships after analysing Section 16, confirmed the order of this Court by holding that the order passed by the Rent Controller is not by itself and without more calculated to injure or affect the interests of the appellant.

A notification of the vacancy is a step-in-aid of an order of allotment or release

and it is only when such an order of allotment or release is passed that the landlord or tenant, as the case may be, can have a grievance. It was further held that the Act contemplates successive opportunities being afforded to persons whose interests are likely to be affected by any order passed by the District Magistrate. In the first place, an order notifying the vacancy can be objected to and the objection has to be decided after considering evidence that the objector or any other person concerned may adduce. Secondly, if an order of allotment or release is passed u/s 16 following upon the notification of a vacancy the aggrieved person can file a review application u/s 16 (5). Thirdly, as against an order passed u/s 16 there is a right of appeal u/s 18.

11. The aforesaid makes it clear that no remedy against mere declaration of vacancy was recognised because that is not a final order. Even after declaration of vacancy the Prescribed Authority is required to pass a release or allotment order and against it the statute provides adequate remedies in which even the question of vacancy can be agitated. The question, therefore, for consideration is whether the order passed by the learned Additional District Judge, Allahabad, in the instant case prejudices the interests of the petitioner and has he any remedy hereafter. I am of the view that the order highly prejudices him and he will have no remedy if this petition is dismissed as non-maintainable. I am of this opinion because when the Additional District Judge has declared vacancy the Prescribed Authority will simply go into the merit of release and allotment applications.

The contention of the petitioner from the very inception has been that he is in possession of this house since 1963 with the consent of the landlord and he has become an authorised tenant by virtue of Section 14 of the Act. When the Additional District Judge has declared vacancy the innings, so far as the petitioner is concerned, is over. He cannot reagitate this point before the Prescribed Authority when the release or allotment applications come up for consideration. Even if he raises it, he will do so unsuccessfully because the Prescribed Authority cannot go against the finding of the Additional District Judge. Therefore, the first remedy contemplated by the case of *Trilok Singh & Co. v. District Magistrate, Lucknow* (AIR 1976 3C 1988) is not available to him.

12. So far as the second remedy by way of review is concerned, it will also not be available to him because while reviewing his order of release or allotment the Prescribed Authority cannot go against the finding given by the learned Additional District Judge on the question of vacancy.

13. The third remedy of appeal or revision against the order of release or allotment has also become infructuous because while deciding an appeal or revision u/s 18 the Additional District Judge himself will not be competent to go against the finding already given at the time of remanding the case. Therefore, the position as it emerges is that the petitioner will have no remedy hereafter if this petition is also dismissed as non-maintainable. Section 14 of the Act confers a right on an unauthorised occupant under certain circumstances. To enforce this right there must be a remedy. In the circumstances of this case the writ petition

is clearly maintainable, I am supported in this view by the case of Jagannath Vs. District Judge, Mathura and Others, . I am further of this view because the Prescribed Authority had rejected the application for release. The appeal filed by the landlord has also been disposed of by declaring vacancy and remanding the case to the Prescribed Authority for disposal of release and allotment applications. It cannot, therefore be said that the petition is directed against an interlocutory order.

14. Another question which arises for consideration is whether the order passed by the learned Additional District Judge is perverse and suffers from any manifest error of law, I am aware of the fact that the boundaries of the High Court's jurisdiction under Article 226 of the Constitution are clearly and strongly built and cannot be breached without risking jurisprudential confusion. The power is supervisory and not appellate in nature. In Nanha and Another Vs. Deputy Director of Consolidation, Kanpur and Others, a Full Bench of this Court held that if it appears that a court of fact has in substance based its finding on no evidence or that its finding is :per- verse in the sense that no reasonable person could possibly come to that conclusion or that it erroneously ignores a vital plea or material evidence which affects the result, a manifest error of law apparent on the face of the record leading to failure of justice can be said to be established. If this test is applied to the instant case it will be evident that the learned Additional District Judge ignored the relevant material on the record and based his conclusions on surmises. As already stated, Sri Tiwari was ,a tenant of this building and was paying rent to the opposite parties. The learned Additional District Judge himself came to the conclusion that Sri Chaturvedi was living in this house from 1963 but according to him, his possession was that of a guest or sub-tenant of Sri Tiwari. There is not a word in the judgment to show on what basis this conclusion was arriv ed at. However, the learned Additional District Judge has also observed that Sri Tiwari informed the landlords in 1963 that Sri Chaturvedi was living with him as his relation. The landlords admit that they have received rent up to 30th of June 1972. The questions that arise for consideration are when Sri Tiwari vacated this house and who paid rent up to June 1972.

It is interesting to note that neither party filed any affidavit in this case. The learned Additional District Judge held that the burden of proving that he is entitled to the benefit of Section 14 lay on Sri Chaturvedi and as he did not file any written consent of the landlord treating him as a tenant or any receipt of rent or copy of municipal assessment it may be presumed that he was in possession of this house without the consent of the landlord. Host of documents were filed from the side of the petitioner to establish his contentions but most of the relevant documents were completely ignored. If they were considered, the result would have been materially different.

15. As stated above, the landlords --opposite parties had not challenged that Sri Chaturvedi entered into possession of this house in 1963, and this fact was well

within their knowledge. Annexure 10 is copy of the letter by Sri M. S. Sodha, Professor -and Dean, Post-Graduates and Research I.I.T., New Delhi. It is dated 17-4-1973. By means of this letter Sri Sodha certified that Sri Tiwari is serving in the I.I.T. at Delhi as a permanent employee with effect from June 15, 1965 and he was residing in I.I.T. Campus ever since with his family. This letter leaves no room for doubt that Sri Tiwari vacated the disputed house before June 1965 and has shifted to Delhi with his family. Sri Chaturvedi started living with him from 1963 well within the knowledge of the opposite parties. No explanation is available why the landlords remained quiet up to 1973 when they treated this house as vacant and applied for release.

In 1967 and 1977 electoral rolls were prepared. Its copies were also filed by the petitioner to show that in these electoral rolls only the members of his family were shown and there was no mention of Mr. Tiwari or any member of his family. It points to the conclusion that Sri Tiwari and his family had vacated the house before 1967. The petitioner filed a large number of letters received from his clients and others at the address of this house. These letters were rightly ruled out of consideration by the learned Additional District Judge on the ground that they were not proved. There were a good number of notices issued by the Board of Revenue to the petitioner in connection with his professional duties. These notices did not require any proof and were sent at the same address. They relate to the period from 1963. The learned Additional District Judge did not at all take them into consideration.

16. In 1972-73 the taxes of this house were paid by the petitioner. In December 1972 the landlords sent a notice to Sri Tiwari requiring him to vacate the house. It is interesting to note that Sri Tiwari was living in Delhi from before 1965 yet this letter was sent to him by the address of this house. However, a copy of it was also sent to the petitioner who duly replied it by stating that Sri Tiwari had shifted to Delhi in 1963 and he was living in it with their consent. Not an iota of evidence was given by the landlords to prove that Sri Tiwari had not vacated this house till 1972. The material discussed above clearly points to the conclusion that Sri Tiwari had left much earlier and the petitioner alone was living in it with his family. The opposite parties also reside in Allahabad and had knowledge of this fact that the petitioner alone was living in it but they raised no objection till 1972.

17. Besides the documentary evidence, the conduct of the opposite parties is consistent with the conclusion that they had consented to take the petitioner as their tenant. This conclusion is further warranted by the fact that, according to their own showing, they have received rent up to June 1972. Its receipts are also alleged to have been issued but no receipt was summoned from Mr. Tiwari to establish this contention. Even if it be said that Sri Tiwari is colluding with the petitioner, the counterfoils of the receipts could be produced by the landlords but not even one has seen the light of the day so far. The landlords did not even choose to file an affidavit in support of it and it is strange how in the absence of

any evidence the learned Additional District Judge was inclined to hold that the rent was paid by Sri Tiwari.

There is every force in the contention of the petitioner that this rent was paid by him for his own occupation as tenant and not on behalf of Sri Tiwari. The learned Additional District Judge had laid great stress on the fact that the petitioner could not file a single receipt and he being a lawyer, would not have paid rent without taking a receipt. There is hardly any force in this contention because it is evident from the material on record that this house was constructed sometime in 1952 and the provisions of U. P. Act III of 1947 were not applicable to it. Before the new Act came into force the rights of the parties were to be determined under the Transfer of Property Act. Under this Act a tenant can be evicted without any ground if a valid notice u/s 106 of the same Act has been given.

Therefore, the petitioner had to remain at the mercy of the landlords and, as contended by him, he did not insist for having receipts. When the new Act came into force and its provisions became applicable to this house, the petitioner started asserting his rights. He insisted on having receipts of the payment of rents. When the landlords refused to do so, he sent rent by money order etc. and it precipitated action on the part of the landlords. Therefore, much capital cannot be made out of the absence of receipts and there is every force in the petitioner's contention that rent up to June 1972 was paid by him in his own right.

18. The learned Additional District Judge has held that the petitioner is in possession of the house from 1963 but in his view he is living as a guest or subtenant of Sri Tiwari. When Sri Tiwari vacated this house before 1965 the question of the petitioner living as his guest thereafter cannot arise. There is absolutely no evidence on record to show that the petitioner is a sub-tenant of Sri Tiwari inasmuch as there is no proof of payment of any rent by him to Sri Tiwari. On the other hand, he is proved to have paid rent to the landlords which is inconsistent with the theory of being sub-tenant of Sri Tiwari. If the petitioners had not expressly or impliedly consented to take the petitioner as their tenant, they would not have accepted rent nor they would have remained quiet for so many years after Sri Tiwari had vacated the house.

I am, therefore, in judgment that the view taken by the learned Additional District Judge was wholly perverse and in utter disregard of the material on the record. In view of the aforesaid discussion it is clear that the petitioner is in possession of the house from 1963 and is paying rent. His possession is that of an authorised tenant u/s 14 of the new Act. Therefore, the house cannot be said to have fallen vacant in or about the year 1972 as alleged by the landlords and the question of the release or allotment does not arise.

19. In the result, the writ petition is allowed and the order dated 30-10-1974 passed by the learned Additional District Judge, Allahabad is quashed. Costs on parties.