
(2012) 09 AHC CK 0133

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No.60 (R/C) of 2011

Chandra Metal Company, Lko.

APPELLANT

Vs

Sri Avtar Singh and Others

RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(1)(b), 18

Citation : (2012) 09 AHC CK 0133

Hon'ble Judges : Saeed-UZ-Zaman Siddiqi, J

Final Decision : Disposed Of

Judgement

SaeedUzZaman Siddiqi, J.

This writ petition has been preferred by the petitioners with the prayer to issue a writ in the nature of certiorari quashing the order dated 18.03.2010, passed by Additional District Magistrate (Trans Gomti)/Rent Control and Eviction Officer, Lucknow, declaring vacancy of the shop in tenancy of the petitioners and also for quashing the order dated 04.05.2011 passed by the Incharge District Judge, Lucknow dismissing the revision filed by the petitioners against the aforesaid order, which are contained as Annexure Nos. 1 and 3 to the writ petition.

The brief facts of the present case are that the landlords moved an application before the Rent Control and Eviction Officer under Section 16(1)(b) of the U.P. Act No.13 of 1972 on 13.05.1988 to the effect that tenancy has arisen with regard to four shops situated in House No.27, Gautam Budh Marg, police staton Aminabad, Lucknow and release of the tenanted premises thereof, which was registered as case no.1 of 2010. The Rent Control and Eviction Officer released the said premises after declaring the vacancy in favour of the landlords.

Feeling aggrieved by the said order, the tenants, who are the petitioners before this Court, filed Rent Revision No.4 of 2011 (M/s. Chandra Metal Company and another Vs. Avtar Singh and others), which was dismissed by learned Incharge District Judge, Lucknow vide judgment and order dated 04.05.2011 holding that

the tenants did not prefer any writ petition before this Hon''ble Court and, as such, the revision is not maintainable. He has further held that in view of the law laid down in the case of Surajbhan Jain Vs. Additional District Judge, Agra and others, reported in 1997(2) ARC 592, to the effect that unauthorized occupant has no authority to prefer revision under Section 18 of the U.P. Act No.13 of 1972 against the order of release.

I have heard learned counsel appearing on behalf of the parties and have gone through the records as well as the judgments and orders impugned in the present writ petition.

The legal position is that when any tenancy is reported or is brought to the knowledge of the Rent Control and Eviction Officer, he may, after holding an enquiry, declare vacancy and then shall proceed on to decide the application for release moved by the landlords, if any, or allot the premises. The prospective allottee cannot file the revision against the order declaring vacancy, but he has an option to prefer writ petition before this Court, if he so chooses. But if the release application is allowed, the prospective allottee may prefer a revision before the District Judge. In case, the release application is rejected, the landlords shall be competent to prefer a revision before the District Judge.

The law has, thus, been settled by the Hon''ble Apex Court in the case of Achal Misra Vs. Rama Shanker Singh and others, reported in 2005(1) ARC, 877, in which it was held :

"In the order of reference to a larger Bench dated 17.8.2000, the learned Judges noticed that it could not be said that the question of vacancy if not challenged by a separate writ petition on its notification could not be questioned in the revision filed under Section 18 of the Act. The question of vacancy pertained to a jurisdictional fact and can be challenged in the revision filed against the allotment order passed by the District Magistrate. In case it was found that there was no vacancy, the order of allotment had to be set aside. The Bench, therefore, felt that the decision in Ganpat Raoy's case holding that the validity of declaration of vacancy cannot be agitated in the revision under Section 18 of the Act challenging the allotment could not be accepted as correct. It was in that context that the case was referred to a larger Bench for decision, since the decision in Ganpat Roy's case was rendered by the three learned Judges of this Court."

The aforesaid authority has been relied upon by a Division Bench of this Court in a number of writ petitions, the leading one of which was Samuel Kempstor Vs. Rent Control & Eviction Officer/Additional City Magistrate, Kanpur Nagar and another, 2007(2) ARC, 888, reported in in which it has been held :

"The settled view which emerged from the decision of the Apex Court as referred to above in the case of Achal Misra II (Supra) clearly provided that against an order notifying vacancy two options were available firstly the order notifying vacancy could be straight away challenged by means of a writ petition under

Article 226 of the Constitution of India without waiting for any order being passed under Section 16 of the Act and secondly the order notifying vacancy could be challenged at a subsequent stage after a final order of allotment or release was made under Section 16 of the Act by filing a statutory revision under Section 18 of the Act against both the orders."

Further more in Samuel Kempstor (*supra*) it has been held :

"On the scheme of the Act, it is clear that the preliminary step is to declare a vacancy. At this stage, an enquiry has to be made including an enquiry involving at least two respectable neighbors. It is thereafter that the vacancy has to be notified and objections invited. This is followed by either dropping of the proceedings on the objections being upheld that there was no vacancy or by allotment to a tenant on finding the vacancy or in ordering a release of the building, in case a landlord was found entitled to have such a release under the Act. Therefore, the notifying of a vacancy is only a step in the process of making an allotment of the building to a tenant. The Act contemplates that no building should be let out by a landlord except through the process of allotment by the Rent Control Authority. Since the order notifying a vacancy is only a step in passing the final order in a proceeding under the Act regarding allotment, it is clear that the same could be challenged while challenging the final order, unless there is anything in the Act precluding such a challenge or conferring a finality to the order notifying a vacancy....."

In view of the law, as discussed above, it is clearly meant that the aggrieved person can file a revision against the order of release, along with order of vacancy, but a revision would be confined to the matter of vacancy and as the release is consequential and subsequent to declaration of vacancy, if the aggrieved person succeeds against the order deciding the vacancy, the matter regarding release would automatically abate and would become redundant.

In view of what has been discussed above, the learned Incharge District Judge has wrongly held that the revision is incompetent. I am purposely avoiding to enter into the merits of the case regarding declaration of vacancy/release because the matter is determined by the revisional Court and any observation made by this Court may affect the right of the aggrieved party to place the same before the revisional Court. In either case, the order of revisional Court dated 04.05.2011 passed in revision no.4 of 2011 (M/s. Chandra Metal Company and another Vs. Avtar Singh and others) deserves to be quashed.

Consequently, the writ petition is allowed. The impugned order dated 04.05.2011 passed by learned Incharge District Judge, Lucknow in revision no.4 of 2011 (M/s. Chandra Metal Company and another Vs. Avtar Singh and others) is quashed and the matter is remitted back to the learned revisional Court to decide the revision afresh in accordance with law as settled by Hon''ble Apex Court and Division Bench of this Court (*supra*).