
(2011) 08 AHC CK 0133
In the Allahabad High Court
Case No : Writ A. No. 46452 of 2011

Chandra Shekhar Bajpayee	Vs	APPELLANT
Rent Control & Eviction Officer/A.C.M.III Kanpur and others		RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12(3)

Citation : (2011) 08 AHC CK 0133

Hon'ble Judges : S.K.Gupta, J

Final Decision : Dismissed

Judgement

Shashi Kant Gupta, J.—This writ petition has been filed against the order dated 22.7.2011 (Annexure No. 9 to the writ petition) passed by the Respondent No. 1 in Rent Case No. 16 of 2010 (Ram Kumar Tiwari Vs. Kamal Kanti) whereby the premises in dispute has been declared vacant under Section 12 of the UP Act No. 13 of 1972 (in short "Act").

2. It is not disputed that Yadunandan Prasad Bajpayee was the original tenant of the disputed premises and he expired in the year 1990 leaving behind his daughterinlaw Kamla Kanti Bajpayee and his grand son Chandra Shekhar Bajpayee. The father of the petitioner had died during the life time of the original tenant Yadunandan Prasad Bajpayee. It is also not disputed that the petitioner as well as his mother Kamla Kanti Bajpayee are residing in the disputed premises and Kamla Kanti Bajpayee had acquired a House No. 17/9, Sajari at Kanpur in the year 2010 as a consequence thereof the disputed premises was declared vacant in view of the Section 12 (3) of the Act.

3. For ready reference, Section 12 (3) of the Act is quoted below;

"(3) In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy

the building under his tenancy :

Provided that if the tenant or any member of his family had built any such residential building before the date of commencement of this Act, then such tenant shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date. "

4. Heard the learned counsel for the petitioner, learned counsel for the respondent and perused the record.

5. Learned counsel for the petitioner has submitted that the petitioner had strained relationship with her mother and he is a cotenant and not a joint tenant of the premises.

6. The submission of the learned counsel for the petitioner is untenable and cannot be accepted. In the case of Harish Tandon Vs. Additional District Magistrate, Allahabad UP and others, ARC 1995 (1) 220, the Apex Court in paragraph 26 of the judgment has held as follows;

"26. The framers of the Act have clearly expressed their intention in Sections 12, 20 and 25 while protecting the tenant from eviction except on the grounds mentioned in Section 20, that after the death of the original tenant his heirs will be deemed to be holding the premises as joint tenants, and for any breach committed by any of such joint tenants, all the heirs of the original tenant have to suffer. They cannot take a plea that unless the grounds for eviction mentioned in subsection (2) of Section 20 are established individually against each one of them, they cannot be evicted from the premises in question."

7. Thus, in the present case, the original tenant Yadunandan Prasad Bajpayee was survived by his daughter-in-law and the petitioner therefore they succeeded to his rights as joint tenants and not cotenant. It is a single tenancy to which they enjoy together. The petitioner as well as his mother are residing together in the same premises and this fact has also not been denied. Therefore, the Section 12 (3) of the Act is fully applicable in the present case.

8. In support of his contention, learned counsel for the petitioner has placed reliance on the full Bench decision of this Court in the case of Smt. Rama Devi Shakhya and another Vs. First Addl. District Judge, Lucknow and another, ARC, 1981 305 wherein this Court, inter alia, has held as follows;

"16. It is difficult to imagine a more inartistic and confusing drafting. The draftsman has used a double negative "a person who has neither been normally residing with nor is wholly dependent on such tenant" shall not be member of the family. To put it in positive terms, the phrase shall refer to a person who has either been normally residing with or is wholly dependent on such tenant. Reading it this way, it seems clear that if either of the two conditions exists, the person will be a member of the family of the tenant. That is to say, if a person is normally residing with the tenant, he shall be a member of the family. If he is wholly dependent on such tenant, then also he will be a member of the family,

even though he may not be normally residing with the tenant."

8. The findings recorded by the trial court is cogent, convincing and satisfactory. The finding recorded by the trial court while passing the vacancy order is neither perverse nor based on any extraneous or irrelevant material. This Court under Article 226 of the Constitution of India can not substitute its own opinion for the opinion of the courts below unless it is found that the conclusion drawn by the lower court is erroneous being contrary to the mandatory provisions of law or based on inadmissible evidence or arrived at findings without evidence.

9. No other point has been pressed by the learned counsel for the petitioner.

10. I do not find any illegality or infirmity in the impugned order.

11. In the result, the writ petition is dismissed.