

(2013) 02 AHC CK 0179
In the Allahabad High Court
Case No : Writ - A No.- 19999 of 1999

Chhotey Lal Jaiswal

APPELLANT

Vs

Rent Control & E.Off.and Others

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 14

Citation : (2013) 02 AHC CK 0179

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Disposed Of

Judgement

Sudhir Agarwal, J.—Heard Sri Rajeshwar Yadav, Advocate, for petitioner and Sri Imran Sayed, Advocate, holding brief of Sri M.K. Pandey, Advocate, for respondents.

2. Writ petition is directed against the order dated 17.3.1999 passed by Rent Control and Eviction Officer, Allahabad (hereinafter referred to as "RCEO") declaring vacancy in the accommodation in question.

3. It appears that proceedings were initiated on an application filed by respondentlandlords for the release of the said accommodation registered as Case No. 32 of 1998. petitioner, claiming to be in possession of accommodation in question, set up a case that he is residing thereat since 197172, and, to fortify the same filed certain documents which have been examined by RCEO. It is an admitted case that petitioner was found in occupation of premises in dispute by Rent Control Inspector, without any letter of allotment. However, if his claim for occupation or tenancy of accommodation in question since 197172 or prior to 5.7.1976 could have been established, the accommodation could not have been declared vacant since petitioner would have been entitled for regularization vide Section 14 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1 972"). This aspect thus has been specifically examined by RCEO as to whether the case set up by petitioner that

he is in possession of the accommodation in question since 1971/72 is fortified by any evidence adduced before him by the petitioner and the findings of fact recorded by RCEO in this regard are as under:

"The arguments adduced by the counsels for house owner and the occupant were heard at length over the vacant state of the part occupied by Sri Chhotey Lal Jaiswal, occupant of the house in question. All documentary evidences available on record were duly perused. On appreciation of the documents, it transpires that Sri Chhotey Lal is in possession over the part of house in question and has claimed to be in possession over it since 1969, documentary evidences thereof have also been submitted and regularization of tenancy of the house part in question has been prayed for in its confirmation u/s 14. But the house owner has not admitted the period of occupation of the said occupant and the evidences filed in its confirmation. The occupant Sri Chhotey Lal has filed a certificate issued by the Assistant Personnel Officer (Civil), Office of the Commandant, Central Arms Depot, Chheoki, Allahabad wherein Chhotey Lal has been mentioned as a temporary resident of house no. 30, Kasturba Gandhi Marg, Allahabad since 1969. On perusal of the said certificate it transpires that nothing has been mentioned therein showing since when Sri Chhotey Lal has been in service with the said department and that the certificate also does not bear the signature of any competent authority whereas Sri Chhotey Lal has in course of inquiry deposed to Rent Control Inspector that he has been residing in the part in question since 1971/72. In this way, the certificate issued by the said department does not appear to be correct. Apart from this, the receipt dated 05.07.1974 issued by the Electricity Department is in favour of the occupant's mother-in-law called Smt. Raj Kumari Jaiswal and its duplicate copy makes mention of the name of Sri Chhotey Lal whereas such copy is endorsed to the concerned officer for action. In this way, the receipt issued by the Electricity Department not having its seal does not appear to be genuine. Besides this, on perusal of affidavits filed by Kailash Chandra, Sunil Kumar Jaiswal, Ravindra Nath Jaiswal & Purshottam Lai, it transpires that the said persons, stated to be close friends of Sri Chhotey Lal Jaiswal, have been made to file affidavits favouring him but no certified evidence has been filed in corroboration of the statements given by the said persons making their averments reliable. As far as the receipts issued in favour of Sri Shankar Lal Yadav are concerned, they are not attested and the said receipts appear to have been filed by the occupant after fabrication in an illegal manner. In this way, it is clear from the evidences enumerated that in order to establish his tenancy dating back to 5.7.1976 the occupant has not filed any certified evidence entitling him to any benefit u/s 14."

(English translation by the Court)

4. RCEO, thus, has receded a finding of fact that petitioner could not prove that he was in occupation of property in question since 1971/72 or for a period prior to 5.7.1976 and, therefore, was entitled for regularization. Learned counsel for petitioner did not address this Court to point out any manifest error or perversity

in the aforesaid findings recorded by RCEO in the impugned order.

5. It is next argued that application was filed by landlord in 1998, and, since it was filed after more than 12 year since the date of possession of petitioner, the application was barred by time.

6. In order to assail impugned order on the ground of limitation, petitioner is under an obligation to prove the date on which he came in possession of property in question. In the present case his claim set up before RCEO that he was in possession since 1971¹⁷² or prior to 5.7.1976 has not been found proved. There is no other date shown by petitioner wherefrom he could be said to be in possession of property in question, and, that being so, it cannot be said that proceedings in questions were barred by time.

7. The question of limitation is a mixed question of fact and law, and, unless specific pleadings, duly supported by evidence is made, it is difficult to find out whether a particular proceedings is barred by limitation or not. Moreover, it does not appear that any such issue was raised before RCEO by petitioner. Here the question of limitation is not applicable like that of Section 3 of Limitation Act that it is an obligation upon the Court to find out whether the proceedings are within time or not. Considering the question of laches, by judicial precedents, principle of 12 years" limitation has been applied. Before attracting those judicial precedents, it is necessary for the person, raising this issue, by placing relevant facts on record, to demonstrate that the proceedings are highly belated and the judicial precedents providing for limitation would duly apply. In the present case, neither there is such pleadings nor such issue was raised before RCEO, he had no occasion to look into this matter, and, a mixed question of facts and law, unless the plea is taken by the parties or is shown to have been raised but not considered, cannot be allowed to be raised for the first time before this Court.

8. In view of above, I find no reason to interfere with the order impugned in this writ petition.

9. Writ petition lacks merit. Dismissed. No costs.

Sudhir Agarwal, J. This is an application seeking recall of my order 9.11.2012, whereby writ petition was dismissed on merits, though in absence of learned counsel for petitioner.

Cause shown for non appearance is sufficient. Order dated 9.11.2012 is hereby recalled. This application, accordingly, stands allowed.