
(2009) 12 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 509 of 2004

Dalvir Singh Yadav and others

APPELLANT

Vs

Additional District Judge, Etawah and others

RESPONDENT

Date of Decision : 05-12-2009

Acts Referred:

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

Citation : (2009) 12 AHC CK 0008

Hon'ble Judges : Shishir Kumar, J

Final Decision : Allowed

Judgement

Shishir Kumar, J.—Heard the learned Counsel for the petitioners. In spite of the repeated calls/ the Counsel for the respondents is not present. Therefore, there is no option with the Court except to hear the matter and to decide it.

2. The facts arising out of the present writ petition are that the petitioners being landlord has filed the present writ petition against an order by which the premises in dispute which was released in favour of the petitioners by the prescribed authority on a revision filed by the sitting tenant, the Revisional Court by the order impugned dated 7.11.2003, Annexure11 to the writ petition has allowed the revision and set aside the order of release which was in favour of the petitioners. It appears that on an application made by one Jagdish Singh S/o Ram Swaroop made an application before the Rent Control and Eviction Officer for declaring the vacancy of the aforesaid premises and District Magistrate directed the Rent Control Inspector to submit a report. The Rent Control Inspector after due inspection of the shop in question has given a report on 17.11.1999 that one Ekhlaq Ahmad was found in possession of the shop in dispute and has told that he is in possession of the shop in question from 1979 and he is paying Rs. 50/ per month. The size of the shop in question was 18 x 16 sq. ft. He has also told to Rent Control Inspector that there is no order of allotment in his favour. On the basis of the report submitted by the Rent Control Inspector, the vacancy was declared to the effect that the respondents No. 4 and

5 were not tenant and in the month of August, 1999, Iqbal Ahmad has sublet the said premises in dispute to Ekhlaiq Ahmad. The order of vacancy was challenged by Ekhlaiq Ahmad before the Revisional Court under section 18 of the Act No. XIII of 1972. The said revision was dismissed and the Writ Petition (No. 9594 of 2002 was dismissed on 31.1.2007) filed by respondent No. 5, meaning thereby the order of vacancy has become final.

3. The petitioners filed an application after declaration of the vacancy that the said premises be released in favour of the petitioners as the vacancy has already been declared. The District Magistrate/Rent Control and Eviction Officer vide its order dated 9.8.2002 was pleased to release the said application holding therein that respondent No. 5 is not an authorized tenant and he has failed to produce any valid order of allotment, therefore, the vacancy was declared and now the petitioners want that the accommodation in question be released in their favour. Therefore, vide its order dated 9.8.2002 after recording a finding that the shop in question is in bad condition and, therefore, it may be released in favour of the petitioner/landlord. The respondent No. 5 aggrieved by the order of release filed a revision before the Revisional Court and the Revisional Court vide its judgment and order dated 7.11.2003 has allowed the revision and set aside the order of release as well as the order of declaring the vacancy.

4. Sri Arvind Srivastava, learned Counsel for the petitioners submit that once the order of vacancy has become final up to the stage of the High Court, it was not open to the Revisional Court to set aside the said order dated 3.8.2001. Further submission has been made that after declaring the vacancy, the prospective allottee, unauthorised occupant or any person has no right to contest the proceeding of release of the accommodation. It is only between the District Magistrate and the landlord and no third person has any right to contest the proceeding. Therefore, the revision filed by the respondents itself was not maintainable and should have been dismissed. But the Revisional Court has erred in law apparent on the face of the record that while considering the question of release, the vacancy order passed by the District Magistrate has also been set aside.

5. Sri Arvind Srivastava learned Counsel for the petitioners submits that this controversy has been settled by this Court in the case of Talib Husain and another v. 1st Additional District Judge, Nainital and others. 1986(12) ALR 113 (FB)=1986(1)ARC1. In such a situation the learned Counsel for the petitioner submits that the order passed by the Revisional Court is liable to be set aside.

6. I have considered the submissions made on behalf of the petitioners and perused the record. After perusal of the record, it is clear that the accommodation in dispute after obtaining the report from the Rent Control Inspector, the vacancy was declared and the respondents No. 4 and 5 were heard and after that it was found that they are not having any valid order of allotment and they are not able to prove that they are in occupation of the premises in dispute prior to 5.7.1976. Therefore, in such a situation, if any person is in

possession of the premises in dispute, his possession will be treated to be unauthorized. It is also well settled in law that after declaring of the vacancy of a particular premises, the question of release of an accommodation is between the landlord and the authority concerned i.e., District Magistrate under section 16 of the Act. Any person who is in occupation of the building, prospective allottee or any person who has made any application for allotment, has got no right to be heard on the question of release of the accommodation. Once the order of vacancy has already become final by this Court, then in my opinion, the Revisional Court was not justified in setting aside the order of vacancy as well as the order of release. The Revisional Court should have taken into consideration the fact that once the order of vacancy has already become final by this Court, then whether in such circumstances the order dated 3.8.2001 can be set aside. Further the question of release on an application made by the respondents not being the landlord should not have been considered.

7. In view of the aforesaid fact, in my opinion, the judgment and order passed by the Revisional Court cannot be sustained and is liable to be quashed.

8. The writ petition is allowed. The order dated 7.11.2003, Annexure11 to the writ petition is hereby quashed.

9. No order is passed as to costs.

Writ Petition Allowed.