
(1999) 01 AHC CK 0064

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 696 of 1988

Ganesh Prasad Tandon (dead) by LR s	APPELLANT
Vs	
R.C.and E.O.II.Allahabad and Others	RESPONDENT

Date of Decision : 20-01-1999

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(9), 16(9)(b)

Citation : (1999) 01 AHC CK 0064

Hon'ble Judges : S.N.Agarwal, J

Final Decision : Partly Allowed

Judgement

Sudhir Narain, J.—There are two questions involved in this petition; firstly as to what is the rate of rent in regard to premises in question and; secondly, in absence of payment of rent whether the allotment order can be cancelled under Section 16(9)(b) of U.P. Act No. 13 of 1972 (in short referred to as the Act).

2. The disputed premises has declared as vacant by the Rent Control and Eviction Officer on 29/1/1985. On 6/11/1985, the premises in question was allotted in favour of respondent No. 2 fixing Rs. 125/ per month as presumptive rent as provided under Section 16(9) of the Act. On 15/11/1985, the allotment order on Form "B" was issued by the office but before it could be served upon the party, respondent No. 2 moved an application before the Rent Control and Eviction Officer with the allegation that the rent of Rs. 125/ per month is excessive. It maybe fixed at the rate of Rs. 25/ per month or the rent which was being paid by the outgoing tenant. It is alleged that same date, respondent No. 1 without "any notice to the petitioner reduced the presumptive rent and fixed Rs. 251 per month. On 4/11/1986, the petitioner filed an application under Section 16(9) (b) of the Act with the averments that the premises in question was allotted in favour of respondent No. 2 and he has obtained possession also but he neither paid nor tendered any rent within the time as specified in the aforesaid section hence the allotment order be rescinded. Respondent No. 2 contested the application and filed counteraffidavit. She alleged that she had paid Rs. 1000/ to

the petitioner on 3041983 as advance rent. This was controverted by the petitioner. On 2071987 an application was filed on behalf of respondent No. 2 stating that the allotment order on Form "B" was not available on record and as such the office may be directed to issue it and only thereafter the application under Section 16(9)(b) may be considered.

3. The Rent Control and Eviction Officer vide order dated 481987 directed to issue the allotment order in Form "B" afresh. The Rent Control and Eviction Officer had also fixed rent at the rate of Rs. 125/ per month while passing the allotment order; As regard fixing of rent of Rs. 125/ per month the order has not been set aside. The rent of the premises remained at Rs. 125/ per month. As regards the submission of the petitioner that allotment order be rescinded, the Rent Control and Eviction Officer recorded finding that the Form "B" was not available on the record and, therefore, he directed to issue fresh Form "B" and in such circumstances, the Rent Control and Eviction Officer did not rescind the order. I do not find any manifest illegality in this finding.

4. In view of the above, the writ petition is partly allowed. The rent of the premises in question will remain at the rate of Rs. 125/ per month instead of Rs. 251 per month and the allotment order shall remain operative.

The parties shall bear their own costs. Petition partly allowed.