
(1998) 09 AHC CK 0082
In the Allahabad High Court
Case No : C.M.W.P. No. 28827 of 1998

Genda Lal

APPELLANT

Vs

District Judge, Kanpur Nagar and others

RESPONDENT

Date of Decision : 07-09-1998

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16, 16(1), 2(1)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 8(2), 9(3)

Citation : (1999) 1 AWC 606

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : K.K. Tripathi, for the Appellant;

Final Decision : Dismissed

Judgement

J.C. Gupta, J.—H e a r d petitioner's counsel.

2. The dispute relates to a portion of house No. 127/196(40), Vishwakarma Mandir. Juhi, Kanpur Nagar, which is a charitable trust property whose Sarvarakar is Mahadev Prasad. It appears that after vacation by Randhir Singh tenant, the disputed accommodation was declared vacant by the order of the R.C.O. dated 14.8.92 and thereafter the same was allotted in favour of the petitioner by the order of the R.C. and E.G. dated 17.9.1992. The landlord challenged the order of allotment by filing revision u/s 18 of the Act and the same was allowed by the Additional District Judge by the order dated 21.9.1994. The order of allotment made in favour of the petitioner was set aside on the ground of non-compliance of the mandatory provisions of Rules 8 (2) and 9 (3) of the Rules framed under the Act inasmuch as at no stage of the proceedings, landlord was informed of the same and the order of allotment was obtained by the petitioner behind the back of the landlord. The revisional court thus directed the Rent Control and Eviction Officer to get the notices served in accordance with law and thereafter to pass

appropriate orders after giving an opportunity of hearing to the landlord. It further appears that the petitioner never challenged the said order passed by the revisional court on 21.9.1994 and succumbed to that order. After the remand, proceedings were decided afresh and this time the R. C. and E. O. released the accommodation in question in favour of the landlord. The petitioner then filed revision before the respondent No. 1 and the same has been dismissed by the impugned order dated 29.8.1998 on the ground that the petitioner, whose position was that of a prospective allottee had no locus standi to object to the claim of the landlord for the release of the vacant premises.

3. I have heard learned counsel for the petitioner at length.

4. Learned counsel for the petitioner vehemently argued that when the proceedings were held before the Rent Control and Eviction Officer pursuant to the order of remand made by the revisional court, the Amending Act (U. P. Act No. V of 1995) has come into force with effect from 26.9.1994 and. therefore, the building in question became exempted from operation of the Rent Control Act, as such, the Rent Control and Eviction Officer ceased to have any jurisdiction to proceed in the matter of allotment or release in respect of the building in question. He contended that the proceedings held by the R. C. and E. O. were thus a nullity Including the order of release made in favour of the landlord.

5. In order to appreciate the above argument of the learned counsel, it is relevant to mention here that by U. P. Act No. V of 1995, clause (bb) was inserted in Section 2, (1) of the Act whereby it has been provided that the Rent Control Act shall not apply to any building belonging to or vested in the public charitable trust or public religious institution. This Amending Act came into force with effect from 26.9.1994.

6. First of all. it may be indicated that there is nothing on record to indicate that the building in question belonged to or vested to a public charitable trust. There is a distinction between a public charitable trust and a private charitable trust. To a building belonging to a private charitable trust, the Act does not cease to operate on account of the amended clause (bb). But assuming for the sake of argument that the building in question is covered by clause (bb), it is to be noted here that the revision filed against the order of allotment made in favour of the petitioner had already been decided on 21.9.94 before the Amending Act came into force. The order of allotment made in favour of the petitioner thus stood cancelled even before the Amending Act came into force. A perusal of the order of the revisional court shows that the order of allotment made in favour of the petitioner was cancelled for valid reasons as it was found that the mandatory provisions contained in Rules 8 (2) and 9 (3) of the Rules were given a complete go by the authority concerned. Under the said provisions the landlord has a vested right to have a notice of the proceedings relating to the allotment of the vacant building. This is obviously for the reason that If the building is bona fide required by the landlord, he may apply for its release u/s 16 (1) of the Act. After when the order of allotment made in favour of the petitioner was set aside by the

revisional court, the petitioner was left with no rights in himself which he could enforce in law. Therefore, even on the assumption that on account of the Amending Act having come into force during the pendency of proceedings before the R. C. and E. O. held in pursuance of remand order of the revisional court, the petitioner is not entitled to derive any advantage on that account as his status as that of an unauthorised occupant remained the same, because indubitably he came to occupy the building in question on the basis of allotment order which was cancelled later on by the revisional court. With the cancellation of allotment order, his status became that of an unauthorised occupant having no rights to continue to retain the occupation of the building in question.

7. It is well-settled law that one who seeks remedy in writ jurisdiction of this Court, has to satisfy the Court that he possesses a right enforceable in law and he has further to satisfy that on account of Infringement of that right, great Injustice has been done to him. In the present case, the petitioner has failed to satisfy this Court that despite the cancellation of order of allotment made in his favour, he possesses any legal and enforceable rights. In this view of the matter, no writ can be issued as has been asked for by the petitioner.

8. It is also well-established principle based on the doctrine of restitution that any wrong done to a party due to a wrong or Illegal order of the Court or the authority has to be remedied, once that order is cancelled or rescinded. If the order on the basis of which a party has received any benefit, is rescinded or cancelled subsequently, the law raises an obligation on that party to make restitution to the other party for what he had lost. The doctrine is an integral part of the administration of justice and is based upon the principle that acts of the Courts should injure no one. Moreover, every Court and authority is supposed to possess an Inherent power to order restitution for doing justice between the parties, so that any party may not be allowed to continue to take unfair advantage on the basis of a wrong act committed by the Court or the authority nor any person be allowed to continue to suffer an injury caused by any act or omission of the Court or the authority, despite the fact that the order had become non-existent on account of its cancellation or supersession by superior court. In the instant case, it is an undisputed fact that the order of allotment made in favour of the petitioner had been cancelled prior to the coming into force of the Amending Act, by an order of the revisional court, which order was never challenged by the petitioner. Once this undisputed position, the petitioner is bound to restore back the possession of the property in question to the landlord. In the circumstances, the District Magistrate/R. C. and E, O. concerned is directed to get the possession of the accommodation in question delivered back to the landlord at the earliest.

9. For the reasons stated above, this writ petition is dismissed in limine.