

(2001) 07 AHC CK 0022
In the Allahabad High Court
Case No : Writ Petition No. 92 of 2001

Ghannu Mal and Others

APPELLANT

Vs

Additional Distt. Magistrate (C.S.)/R.C.E.O., Lucknow and
Others

RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(1), 34(4)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 25

Citation : (2001) 4 AWC 2563

Hon'ble Judges : U.K. Dhaon, J

Bench : Single Bench

Advocate : J.N. Pandey, B.N. Tripathi and Y.N. Srivastava, for the Appellant;
C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

U.K. Dhaon, J.—Heard Sri J. N. Pandey, learned counsel for the petitioners and the learned standing counsel, who has put in appearance on behalf of opposite party No. 1.

2. The petitioners have approached this Court against the order dated 9.5.2001 passed by the Additional District Magistrate (Civil Supplies), Lucknow.

3. The brief facts of the case are that the release application u/s 16 (1) (b) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, was moved by Sri Aditya Narain Misra who was the landlord of the premises. During the pendency of the proceedings before the Rent Control and Eviction Officer, Lucknow, Sri Aditya Narain Misra expired on 29.5.1998 and thereafter an application was moved for substitution u/s 34, Sub-clause (4) of U. P. Act No. 13 of 1972 read with Rule 25 of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, for substitution of the legal heirs which was

allowed by the Rent Control and Eviction Officer by the order dated 5.11.1999 and the names of Sri Anand Kumar Misra, Akhilesh Kumar Misra, Rakesh Kumar Misra, and Smt. Shashi Bajpai were substituted in place of the deceased Aditya Narain Misra being legal heirs and the representatives. During the pendency of the proceedings Sri Akhilesh Kumar Misra expired and Smt. Geeta Misra moved an application on 12.1.2000 u/s 34 Sub-clause (4) read with Rule 22 for substitution which was allowed by the Rent Control and Eviction Officer by the impugned order dated 9.5.2001 and the objections preferred by the petitioners were rejected.

4. Sri J. N. Pandey, learned counsel for the petitioners submits that only provisions under U. P. Act No. 13 of 1972 for substitution is Section 34, Sub-clause (4) and under Sub-clause (4) there are only two contingencies when Rent Control and Eviction Officer can allow the substitution application :

- (i) when there are proceedings for determination of standard rent and,
- (ii) when there are proceedings for eviction from building.

5. He further submits that the Rent Control and Eviction Officer has passed the impugned order after more than eight months from the hearing of the argument in an arbitrary and illegal manner and on this ground alone, the order deserves to be quashed. He has relied upon the decision of this Court, in *Mohen Singh Bedi v. Phool Chandra and Ors.* 1982 ARC 421

6. I have considered the argument of the learned counsel for the petitioners and gone through the impugned order and the relevant provisions contained in the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Section 34 (4) is as follows :

"where any party to any proceeding for the determination of standard rent or for eviction from a building dies during the pendency of the proceeding, such proceeding may be continued after bringing on the record :

- (a) in the case of the landlord or tenant, his heirs or legal representatives ;
- (b) in the case of unauthorised occupant, any person claiming under him found in occupation of the building."

7. In the instant case, the proceedings were initiated u/s 16 (1) (b) by the landlord. Section 16 (1) (b) of the Act is as under :

"16. Allotment and release of vacant building.--Subject to the provisions of the Act, the District Magistrate may by order :

- (b) "release the whole or any part of the building or any land appurtenant thereto in favour of the landlord (to be called a release order)"

8. The effect of the order u/s 16 (1) (b) will be the eviction of unauthorized occupant from the premises in dispute. The Legislature has also protected the right of the legal heirs under Rule 25 of the U. P. Urban Building (Regulation of

Letting. Rent and Eviction) Rules. 1972. Rule 25 of the Rules is as follows :

(1) Every application for substituting the name of (the heirs or legal representatives, the claimants or occupants) of any person who was a party to any proceedings under the Act and died during the pendency of the proceedings shall be preferred within one month from the date of the death of such person.

(2) The application shall contain the names and addresses and other details of the heirs or legal representatives and their relationship with the deceased and be accompanied by any affidavit in its support, and thereupon, the application shall be decided after a summary Inquiry by the authority concerned.

9. In the instant case, the landlord Sri Aditya Narain Misra has expired on 29.5.1998 and thereafter Anand Kumar Misra. Akhilesh Kumar Misra, Rakesh Kumar Misra and Smt. Shashi Bajpai were substituted by the order dated 5.11.1999 and after the death of Sri Akhilesh Kumar Misra on 30.12.1999, an application was moved by his widow Smt. Geeta Misra and two minor sons Apoorva Misra and Anupam Misra on 10.1.2000 and this application was also allowed by the Rent Control and Eviction Officer by the impugned order. The legal heirs of the landlord have a right to prosecute the release application and there was no Illegality committed by the Rent Control and Eviction Officer in allowing the substitution application. The law declared by this Court in Mohen Singh Bedi v. Phool Chandra 1982 ARC 421 is not applicable to the facts of the present case as in the instant case, the legal heirs of one of the landlord has moved the substitution application to prosecute the proceedings before the Rent Control and Eviction Officer. The writ petition is devoid of merits. It is accordingly rejected at the admission stage.