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**(2013) 01 AHC CK 0089**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 53774 of 2002**

Hari Krishan Ojha

APPELLANT

Vs

State Bank of Bikaner and Jaipur

RESPONDENT

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**Date of Decision :** 11-01-2013

**Acts Referred:**

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15, 15(a), 2(g)  
Transfer of Property Act, 1882 — Section 106  
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 2, 2(1), 2(1)(a), 20, 20(1)

**Citation :** (2013) 6 ADJ 461 : (2013) 3 ALJ 361 : (2013) 97 ALR 324 : (2013) 2 AWC 1498 : (2013) 2 RCR(Rent) 431

**Hon'ble Judges :** Sudhir Agarwal, J

**Bench :** Single Bench

**Advocate :** W.H. Khan, J.H. Khan and Vijay Shankar Mishra, for the Appellant;  
S.C. Vipin Sinha, Miss Shaily Sexena and Ashish Srivastava, for the Respondent

**Final Decision :** Allowed

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## Judgement

Sudhir Agarwal, J.—Heard Sri J.H. Khan, learned counsel for the petitioner and Miss Shaily Saxena. Advocate holding brief of Sri Vipin Sinha, Advocate for the respondents. Short, but, important question of law involved in this case is whether Small Cause Suit filed by respondent-Bank seeking eviction from building in dispute is barred by Section 15 of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as "Act. 1971").

2. The facts, not in dispute, are that respondent-Bank is owner of property in dispute, namely, House No. 8/143, Bheron Bazar, Belanganj, Agra (known as "Bharat Building"). Petitioner was let out certain portion at first floor of the aforesaid building at a monthly rent of Rs. 60.30. Petitioner allegedly committed default in payment of rent as a result whereof Bank issued a notice dated 19.6.1987 u/s 106 of Transfer of Property Act, 1882 (hereinafter referred to as "Act, 1882") demanding arrears of rent and determining petitioner's tenancy and

thereafter filed Small Cause Suit No. 116 of 1988 in the Court of Small Causes, Agra. Petitioner contested the suit alleging that he has deposited entire rent u/s 30 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") in the Court of Munsif, Agra, hence, the decree of eviction cannot be passed against him by virtue of Section 20 (4) of Act, 1972. When issues were framed, it appears that a preliminary objection was raised by petitioner that disputed building is a public building as defined in Act, 1971 and, therefore, suit is barred by virtue of Section 15 of Act, 1971. Objection was turned down by trial court vide order dated 10.10.1991 where against Civil Revision No. 42 of 1992 was filed and the same was also rejected by IXth Addl. District Judge, Agra vide judgment dated 4.9.1992.

3. Sri J.H. Khan, learned counsel for petitioner, vehemently contended that once tenancy of petitioner was terminated by legal notice dated 19.6.1987, subsequent occupation of petitioner becomes unauthorized and having satisfied requirement of Section 15(a) of Act, 1971, no suit was maintainable. Reliance is placed on a single Judge judgment of this Court in Riyasat Khan (D.) through L.Rs. Vs. Union of India (UOI) and Others, .

4. Per contra, on behalf of Bank, reliance is placed on an earlier decision of this Court in The Reserve Bank of India Vs. S.B. Srivastava, .

5. In the present case, it cannot be doubted that initial possession of petitioner was not unauthorized. He was admittedly a tenant in the premises in dispute and there being certain default on his part, a demand notice was issued on 19.6.1987 and tenancy was terminated by the said notice said to have been issued u/s 106 of Act. 1882.

6. Though the notice itself does not mention any provision but that being so pleaded by petitioner, can it be said that such determination of tenancy results in rendering possession of a person of a building which is otherwise governed by a rent statute to be unauthorized or wholly illegal so as to take it away from the ambit of rent statute. This Court finds that mere determination of tenancy does not render a tenant liable for eviction/ejectment or dispossession by conferring any right of re-entry upon owner or landlord except of certain circumstances so provided in rent statute. This is clear from Section 20 (1) of Act. 1972, which reads as under:

20. Bar of suit for eviction of tenant except on specified grounds.--(1) Save as provided in sub-section (2), no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit in any other manner:

Provided that nothing in this sub-section shall bar a suit for the eviction of a tenant on the determination of his tenancy by efflux of time where the tenancy for a fixed term was entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceeding, which is either recorded in Court or otherwise reduced to writing and

signed by the tenant.

7. That being so, the result would be that after determination of tenancy, a tenant may lose his character of a tenant under an agreement or contract but would become by operation of law, a statutory tenant. Since the rent statute itself protects interest of tenant in this regard., it cannot be said that determination of tenancy by a notice to quit or in any other manner, a tenant would become an unauthorized occupant of the premises which is within the ambit of Act, 1972 by virtue of Section 20 (1) and no suit for dispossession can be filed unless it can satisfy the requirement of Section 20 (2) of Act. 1972. Admittedly, Act. 1971 is not applicable to a tenant and to a building governed by rent statute.

8. In view thereof I find that decision of this Court in Reserve Bank of India (supra) squarely cover the issue in question and there is no reason to interfere with the impugned judgments but unfortunately I find that there is another single Judge decision in Riyasat Khan (supra) wherein also the facts are same but without looking into the earlier decision in Reserve Bank of India (supra) and also the various provisions of Act, 1972, the Court, simply relying on Section 15 of Act. 1971, has held that suit under rent statute was not maintainable. Therein the attention of Court appears to have not been drawn to Section 20 of Act, 1972 and also the definition given in Section 2 (g) of Act, 1971, which defines "unauthorized occupation" as under:

2 (g) "unauthorised occupation", in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

(Emphasis added)

9. The definition talks of a case where occupation of any person of public premises is without authority for such occupation and also includes a case where authority granted to the occupant has expired or has been determined for any reason whatsoever. The definition is inclusive and cannot be read in isolation inasmuch as despite determination of lease right, an incumbent when, under a statute, is entitled to continue to occupy a particular property, such occupation is authorised by a statute, hence cannot be said to be an occupation without authority, and that being so, the definition of unauthorized occupation in view of Section 20 (1) would not be attracted so as to bring in Act, 1971 in this case. The Hon"ble single Judge decision in Riyasat Khan (supra), in my view, does not lay down a correct law but since there are two contrary decisions of Hon"ble single Judge, judicial propriety demands that instead of following one of these inconsistent decisions, the matter should be referred for settling a legal position right to a large Bench.

10. I would have referred this matter to a larger Bench but find such exercise to be academic in this particular case for the reason that there is an amendment in Section 2 of Act, 1972 by U.P. Act No. 17 of 1985, which exempted operation of Act to certain building and Clause (a) of Section 2(1) thereof, reads as under:

2. Exemptions from Operation of Act.--(1) Nothing in this Act shall apply to the following namely--

(a) any building of which the Government or local authority or a public sector corporation or a Cantonment Board is the landlord.

11. The term "public sector corporation", in view of its definition contained in Section 3 (p) of Act, 1972. covers a Bank also and, therefore, in view of aforesaid amendment in Act, 1972 the building in dispute is exempted from operation of aforesaid Act. That being so, the question of considering matter in the light of Section 20 of Act, 1972 would not be attracted in the present case and, hence, the suit before Small Causes Court, in the present case, would have to be held barred by Section 15 of Act, 1971.

12. The judgment in Reserve Bank of India (supra) would not apply in the present case since that was a case before insertion of Section 2 (1) (a) in Act, 1972 and, therefore, since Act. 1972 had not exempted the kind of buildings at that time, the Court decided the matter taking into consideration provisions of Act, 1972 but that is not the situation in present case. In that case the Court specifically relied on the provisions of Act, 1972 in order to take a view that suit was not barred by Section 15 of Act, 1971 observing that otherwise the plaintiff would have no remedy under that Act. The reasons and rationality provided therein referring to Act, 1972 has ceased now after the amendment to Section 2(1) by U.P. Act No. 17 of 1985 and therefore, the said decision as such, is no longer applicable in the changed circumstances.

13. In view thereof, following the decision in Riyasat Khan (supra) and referring to Section 15 of Act, 1971. I have no hesitation in holding that suit in the present case was barred thereunder, hence the judgments impugned in this writ petition have to be held wholly without jurisdiction.

14. In the result, the writ petition is allowed. The impugned judgments dated 15.10.1999 and 13.11.2002 are hereby set aside. However, it is made clear that this judgment shall not preclude the respondent-Bank from taking such steps as permissible in law in the appropriate forum. No costs.