
(1999) 05 AHC CK 0191
In the Allahabad High Court
Case No : C.M.W.P. No. 569 of 1999

Hari Shanker Rastogi

APPELLANT

Vs

Rent Control and Eviction Officer, Allahabad and others

RESPONDENT

Date of Decision : 13-05-1999

Acts Referred:

Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 213
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 11, 12, 2(2)

Citation : (1999) 3 AWC 1865

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Rajesh Tandon, for the Appellant; S.C. and A.K. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 23.12.1998 passed by the Rent Control and Eviction Officer respondent No. 1 declaring the accommodation in question as vacant.

2. The version of the petitioner is that he was let out first floor portion of premises No. 647, Katra, Allahabad (hereinafter referred to as the premises in dispute) in the year 1974 by landlord-respondent No. 3. In June, 1979 respondent No. 3 insisted for enhancement of rent. On 28.6.1979 an agreement was executed between the petitioner and respondent No. 3 by which the premises in dispute was given to him for four years. In the agreement, It was stipulated that if the petitioner continues after 30.6.1980, he was liable to pay rent at the rate of Rs. 250 per month and if he fails to vacate after four years, he shall be liable to pay 25% more than the actual rent up to one year time as mutually settled. This accommodation was let out without any allotment order being passed in his favour by respondent No. 1 as required under the provisions of U. P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 (in

short the Act).

3. Respondent No. 2 filed an application for allotment on the allegations that the accommodation in question was occupied by the petitioner without any allotment order and as such his possession was unauthorised and should be deemed as vacant. Respondent No. 1 directed the Rent Control Inspector to submit a report who submitted a report that the petitioner was in occupation without any allotment order and the matter may be examined after hearing the parties. Respondent No. 1 issued notice to the petitioner as well as respondent No. 3. The petitioner took an objection that the accommodation in question was constructed in the year 1974 and at the time, the premises in dispute was let out, the provisions of the Act were not applicable. Respondent No. 1, on consideration of the evidence on record, came to the conclusion that the premises in dispute was constructed in the year 1966 and the petitioner was let out such premises on 28.6.1979 and the provisions of the Act were fully applicable at the time of letting and as he was in possession without any allotment order being passed, the agreement of tenancy shall be deemed as void u/s 11 of the Act and the accommodation in question shall be deemed as vacant. Respondent No. 1 declared the accommodation in question as vacant vide order dated 23.12.1998.

4. I have heard Sri Rajesh Tandon, learned counsel for the petitioner and Sri Ravi Kiran Jain, Senior Advocate for respondent Nos. 2 and 3.

5. The petitioner has challenged the findings recorded by respondent No. 1 that the premises in dispute was completed in the year 1966. The date of the completion of construction shall be determined taking into account Explanation 1 (a) of second proviso to sub-section (2) of Section 2 of the Act which provides that the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction and in the case of a building subject to assessment, the date on which the first assessment thereof comes into effect, and where the said dates are different, the earliest of the said dates and in the absence of any such report, record or assessment, the date on which it is actually occupied. In *Saleem v. District Judge, Muzaffarnagar and others* 1998 (2) ARC 617. Hon"ble the Supreme Court held that the date of occupation would be taken to be the date of completion of the construction only when there is no report or record of the completion of the construction or no assessment thereof. If there is an assessment, it will be the first date of assessment which will be deemed to be the date of completion of the construction.

6. In the present case, there is no evidence of the date of the report of the completion of the construction or it was recorded by the local authority. As regards the assessment, the parties have filed the extract of assessment record. The building in question, namely, premises No. 647, Katra, Allahabad has been assessed in the municipal record for the year 1960-65 at annual rental value of Rs. 150. In the quinquennial assessment year 1965-72 the assessment has been increased from Rs. 150 to Rs. 900. There is an entry in the remark column that

the Increase of the assessment has been made in pursuance of the order passed on file No. 21/66/67 from Rs. 150 to Rs. 900. This annual value continued in the quinquennial assessment year 1972-82. In the assessment year 1989-94 it was raised to Rs. 1,800 and in this quinquennial-assessment year in the remark column the entry is that it has been enhanced on the basis of an order passed on 17.6.1989 by Mukhya Nagar Adhikari from Rs. 900 to Rs. 1,800. The petitioner has himself filed the copies of the extracts of these quinquennial assessment as Annexures to the Supplementary Affidavit.

7. Learned counsel for the petitioner contended that respondent No. 1 had summoned the relevant diary in respect of the premises in question to indicate that on what basis the premises in dispute was assessed. Respondent No. 1 had passed an order on 8.9.1998 summoning the record from the municipal authorities. The municipal authorities did not produce the relevant diary. On 31.1.1999, after hearing the learned counsel for the parties, I directed the Mukhya Nagar Adhikari, Nagar Nigam, Allahabad to send the record in relation to the assessment years 1965-72 and 1972-89 including the files on the basis of which the assessment was made and further the relevant diary indicating as to when the construction was reported to be completed to the authorities concerned. The Mukhya Nagar Adhikari, Nagar Nigam sent certain papers with the officials, I directed to file them with a report. The Tax Superintendent submitted a report and produced the documents along with photostat copies of four documents. In the report, it was indicated that the records for the assessment year 1965-72 and 1972-89 were not available. In absence of the diary, the findings could not have been recorded as to the date of reporting of the date of completion of the premises in dispute. The , municipal assessment record was, however, available and the finding regarding the date of completion of the construction is to be recorded on the basis of the municipal assessment records.

8. The version of the petitioner was that he was let out the accommodation in the year 1974 at Rs. 150 per month. The assessment for the year 1960-65 shows that the annual value of the house was Rs. 150. It was raised from Rs. 150 to Rs. 900 in the assessment year 1966-67 as is clear from the record of assessment year 1965-72. The assessment of the house as then existed prior to the year 1965, was not in relation to the first floor of the house. The landlord had filed a map for sanction of the construction of the first floor of the premises in dispute in the year 1964. The photostat copy of the extract of the map has been filed as Annexure-"6" to the supplementary-affidavit filed by the petitioner. It indicates that Nagar Abhiyanta, Nagar Mahapalika, Allahabad had sanctioned the map on 18.11.1964 and the Prescribed Authority sanctioned the map on 23.11.1964. The petitioner is in occupation of the first floor which was constructed after the map was sanctioned. The remarks column in the quinquennial year 1965-72 indicates that the annual value was enhanced from Rs. 150 to Rs. 900 in pursuance of the order passed on file No. 21 of 1966-67. This shows that the annual rental value was enhanced in the year 1966-67 after

the first floor was constructed. This annual rental value continued till the assessment year 1988. It was in the assessment year 1989-94 that the annual rental value was enhanced from Rs. 900 to Rs. 1800.

9. A Nagar Mahapalika is entitled to raise annual value u/s 213 (d) of the U. P. Nagar Mahapalika Adhiniyam, 1959 where the value of the property has been increased by additions-alterations to building. The extract of the quinquennial assessment for the year 1965-72 indicates that the annual value was enhanced in pursuance of the order passed by the Municipal authorities in the assessment year 1966-67. The increased assessment takes effect from the beginning of financial year, i.e., first April of that year. The sanction of the map for construction of first floor of the house in question in the year 1965 coupled with the fact that assessment was increased in the assessment year 1966-67 leaves no room for doubt that the first floor portion, of which the petitioner is tenant, was completed in the year 1966.

10. Respondent No. 1 disbelieved the version of the petitioner that it was let out to him in the year 1974. The petitioner and respondent No. 3 executed a written agreement on 28.6.1979 and in para 2 of the said agreement, it was stated that the petitioner took possession from 1st July, 1979 and the rent will commence from 1st July, 1979: Para 1 of the agreement provided that the letting was for four years. The findings recorded by respondent No. 1, that the disputed premises was constructed in the year 1966 and at the time of letting, the provisions of the Act were applicable, do not suffer from any illegality.

11. The next submission of the learned counsel for the petitioner is that the landlord had admittedly let out the premises in question in the year 1979 and even if there was no allotment order, he is entitled to continue in possession. It was contended that the rent control authorities should have taken steps for declaration of vacancy and the proceedings for allotment/release within a reasonable time from the date of letting. He has placed reliance upon the decision *Smt. Brij Bala Jain v. Smt. Amarjeet Kaur and others* 1996 (2) ARC 474, wherein the question was whether the tenant having admitted a person as a partner in the business which was being carried on in the shop amounts to deemed vacancy. On facts, it was found that the landlady was residing on the first floor and on the ground floor business was being carried on and the landlady having not raised any objection for more than 12 years but when the premises was sold to another person, such purchaser submitted an application to declare it as vacant and in that context, it was held that there was unreasonable delay in submitting the application for declaring the vacancy u/s 12 of the Act. This case was considered in *Mool Chandra Gupta v. Rent Control and Eviction Officer/ Additional City Magistrate (1st), Kanpur Nagar and another*, 1999 (1) ARC 515, and it was held that if an accommodation is let out without any allotment order, it shall be void and such tenant cannot claim any right to continue in occupation and relying upon the Full Bench decision in *Nootan Kumar and others v. IInd Additional District Judge, Banda and others* 1993 (2) ARC 204, it was held that

the agreement of the lease between the landlord and the tenant in contravention of the provisions of Section 11 of the Act is void and unenforceable in a Court of law. The tenant cannot justify his unauthorised occupation of a building on the ground that the landlord had let out and his occupation should be treated as authorised in pursuance of such an agreement. Similar view was taken in *Rakesh Kumar Vatsa v. District Judge, Saharanpur and others* 1999 (1) ARC 457.

12. In view of the above discussions, I do not find any merit in the writ petition and it is, accordingly, dismissed.