
(2006) 03 AHC CK 0229

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 33384 of 1991 and 12082 of 1993

Hotilal Sharma

APPELLANT

Vs

Sub Divisional Magistrate and Others
Mor Mukut
Sharma Vs District Judge and Others

RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 16(1)(b)

Citation : (2006) 9 ADJ 20 : (2006) 3 AWC 2306

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—First writ petition is directed against the order dated 15.11.1991 passed by Rent Control and Eviction Officer/Sub Divisional Magistrate, Mant district Mathura in the case of Anil Kumar Agarwal v. Mor Mukut Sharma and two Ors.. Through the said order house in dispute viz. House No. 90A Govind Nagar Mathura has been declared vacant. However through the said order release application of the landlord u/s 16(1)(b) of the Act was also rejected after recording the finding that Rent Control and Eviction officer was not satisfied that landlord bonafidely required the same. Against order rejecting the release application landlord - Anil Kumar Agarwal filed civil (Rent Control) Revision No. 213 of 1991. District Judge, Mathura through judgment and order dated 21.1.1993 allowed the revision, set aside that part of the order dated 15.11.1991 passed by R.C.& E.O. through which release application had been rejected. District Judge further directed that in case writ petition filed against that part of the impugned order dated 15.1.1991 through which vacancy was declared (i.e. this writ petition No. 33384 of 1991) was dismissed then R.C. & E.O. should re-consider release application. District Judge allowed the revision on 21.1.1993.

2. The vacancy was declared on the ground that Mor Mukut respondent No. 5

was the tenant of the accommodation in dispute and he had admittedly constructed a house in the same city. The case of Mor Mukut Sharma was that he was not the tenant of the house in dispute but his father i.e. Hotilal Sharma the petitioner was a tenant. Petitioner also took up the same case and asserted that it was he who was the tenant and not his son Mor Mukut Sharma hence no vacancy occurred due to construction of house by Mor Mukut Sharma, as he was not dependent upon him and he had constructed the house after taking loan from the Bank. The case of the landlord was that Mor Mukut Sharma was tenant since June 1978.

3. Initially Shivadhar Misra was the owner landlord of the house in dispute whose father had let out the same. Shivadhar Misra on 25.1.1988 executed an Agreement for sale in favour of respondents 2 to 4 Anil Kumar Agarwal, Girish Kumar Agarwal and Rajendra Kumar Agarwal all sons of Bhikkhilal Agarwal. Shivadhar Misra on the same date i.e. 25.1.1988 executed a power of Attorney in favour of Bhikkhilal Agarwal, i.e. Father of respondents 2 to 4. Acting upon the said power of attorney and on the basis of the said Agreement Sri Bhikkhilal Agarwal executed a registered sale deed in respect of the house in dispute in favour of his sons on 21.1.1989.

4. Earlier one Ravindra Pandey had applied for the allotment of the house in dispute on that very ground which was subsequently taken up by respondents 2 to 4 i.e. house in dispute was in tenancy occupation of Mor Mukut Sharma and he had constructed his own house, hence house in dispute was vacant. The said allotment application was rejected by Rent Control and Eviction Officer on 22.9.1988 holding that there was no vacancy. Thereafter Ravindra Pandey on 6 or 27th October, 1988 filed a review petition which was rejected on 22.6.1989 by Rent Control and Eviction Officer. Thereafter on 27.6.1989 release application was filed by respondents 2 to 4 on which impugned order dated 15.11.1991 was passed.

5. In the earlier proceedings it was held by Rent Control and Eviction Officer that it was Hotilal Sharma who was the tenant and not Mor Mukut Sharma, hence allotment application of Ravindra Pandey was dismissed on the ground that there was no vacancy.

6. In the impugned order after discussing the material brought on record by the parties Rent Control and Eviction Officer held that until 1988 Hotilal Sharma was not residing in the house in dispute. In respect of contrary judgment and finding of his predecessor in earlier proceedings, R.C. & E.O. held them to be wrong and not binding upon him.

7. learned Counsel for the petitioner has firstly argued that the findings of R.C. & E.O. that house in dispute was taken on rent by son Mor Mukut Sharma was erroneous in law and in-fact petitioner-Hotilal Sharma father had taken the house in dispute on rent. The other argument raised by learned Counsel for the petitioner is that the earlier findings of R.C. & E.O. given in the case initiated on

the allotment application of Ravindra Pandey could not be set aside or ignored through the impugned order as the earlier order operated as res-judicata.

8. On 8.12.2005 petitioner was directed to file Supplementary affidavit stating therein extent of accommodation in dispute and position of payment of rent. Thereafter Krishna Kumar son of petitioner Hoti Lal Sharma filed Supplementary affidavit on 20.12.2005. In the said Supplementary affidavit it has been stated that accommodation in dispute consists of three small rooms and one veranda, latrine and the total area of the house in dispute is 195 Sq. meters out of which approximately 49 Sq.meters is the area of covered portition. Map of the accommodation in dispute has also been annexed alongwith said Supplementary affidavit. It has further been stated in the said affidavit that rate of rent is Rs. 65/- and it has not been paid since August 1990. It has also been stated that rent until June 1990 was paid to the previous landlord. It has further been stated that petitioner was ready to make payment of the entire rent. It has also been stated that petitioner is depositing house tax and water tax. The reason for non-payment of rent since August 1990 stated in the Supplementary affidavit is that Bikkhilal Agarwal father of the landlord refused to give receipt for the rent of July 1990 hence no further rent was paid. (According to landlord no rent has been paid since they purchased the property in dispute on 21.1.1989). If landlord refuses to give receipt of rent, tenant may send the rent through money order or deposit the same u/s 30 of U.P. Act No. 13 of 1972.

9. Rent of Rs. 65/- per month for an accommodation containing three rooms and a veranda is virtually as well as actually no rent. Even this petty amount of Rent has not been paid for more than 15 years either by the father or the son. There is a world of difference between readiness to pay and actual payment. If the tenant is not paying rent for several years inspite of the same being highly inadequate, it is not in the interest of justice to grant him the quitable relief in exercise of writ jurisdiction. Even if the order challenged in the writ petition is illegal, writ court may refuse to set aside the same if petitioner is behaving in a highly unjust manner. An alleged tenant who does not pay rent for 15 years is debarred from envoking writ jurisdiction of the High Court as equitable consideration is paramount in exercise of writ jurisdiction.

10. Accordingly, on the ground of non-payment of rent by the petitioner for fifteen years, I do not consider it proper to decide as to whether impugned order is incorrect or correct. Writ petition is liable to be dismissed only on the ground that the alleged tenant has not admittedly paid the rent for fifteen years.

11. Accordingly, first writ petition is dismissed.

12. The second writ petition is directed against interim order dated 15.3.1993 passed by JSCC/Civil Judge II, Mathura in SCC suit No. 1 of 1990 filed by Anil Kumar Agarwal against Mor Mukut for eviction as confirmed by District Judge through order dated 6.4.1994 passed while dismissing civil revision No. 43 of 1993 which was directed against order dated 15.3.1993.

13. The order dated 15.3.1993 was passed on three applications filed by Mor Mukut in SCC suit No. 1 of 1990. Through the said applications prayer for dismissal of the suit was made on the basis of order passed by R.C. & E.O. on the allotment application of Ravindra Pandey. The applications were rejected on the ground that afterwards vacancy had been declared by R.C. & E.O. through order dated 15.11.1991, As in the first writ petition order dated 15.11.1991 has been maintained hence second writ petition is also to be dismissed.

Accordingly, second writ petition is dismissed.