
(1999) 10 AHC CK 0087

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6953 of 1995

Jag Narain

APPELLANT

Vs

R.C.and E.O.Varanasi and Others

RESPONDENT

Date of Decision : 07-10-1999

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Chapter 3

Citation : (1999) 10 AHC CK 0087

Hon'ble Judges : Yatindra Singh, J

Final Decision : Disposed Of

Judgement

Yatindra Singh, J.—This is a writ petition against the order dated 31st August, 1994 passed by Rent Control and Eviction Officer declaring vacancy in the shop in dispute.

2. I have heard Sri S.N. Singh, counsel for the petitioner and Sri L.P. Nathani senior Advocat? for the respondent. One Sri Shrinath Gjupta filed an application that the shop i[^]i question is vacant and it should be allotted to him. It is on his application that the proceedings under Chapter III of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1971 (the Act) were started. A report was also called for by the Rent Control and Eviction Officer and thereafter notices were issued to Sri Jag Narain (the petitioner) who is alleged to be tenant and Sri Ramesh Chandra Khare who is admittedly the landlord of the shop in dispute. The petitioned filed an affidavit on 3rd May, 1994 in which he has stated that he is in possession for the last 19 years. The landlord filed a rent note alleged to be executed in the year 1983 that the petitioner is Jus tenant at the rate of Rs. 200/ per month since 1983. The Rent Control and Eviction Officer after considering the evidenced on record held that the petitioner is in possession of the shop in question since 1983 and as there is no allotment order, the possession of the tenant is illegal.

3. The Rent Control and Eviction Officer while arriving at the finding that

possession of the petitioner started in 1983 took into consideration the rent note alleged to be executed in the year 1983 on the ground that the petitioner has not denied the Same. This is disputed by the petitioner. According to the petitioner he had filed art objection in the form of an affidavit on 14th July, 1994 in which he objected to this rent note and according to him this objection has not be taken into account. However, this objection is not on the record at present. In order to show that this objection in form of the affidavit was filed before the Court below. Sri Singh has pointed out paragraph 31 of the writ petition where he has stated that it was filed before the Court below. I have also looked into paragraph 46 of the counteraffidavit in which the landlord has denied this. The petitioner has filed a rejoinder affidavit and in paragraph no. 45 of the rejoinder affidavit has again reiterated the same. The petitioner has also filed an affidavit of Sri Atma Prasad and Sri Nageshwar Prasad two advocates who have stated that they had filed this objection.

4. At this stage I do not wish to go into allegations and counter allegations. Justice may not be done but should appear to be done also. The advocates have stated that affidavit was filed. I think justice would be met if the impugned order dated 31st August 1994 is quashed and the matter is sent back to the Rent Control and Eviction Officer, Varanasi to decide the case afresh.

5. Sri Nathani, Senior Advocate for the landlord has argued that the landlord had filed a suit for eviction of the tenant in which the tenant has taken a contrary stand and an adverse finding has been recorded. These documents were not been before the Rent Control and Eviction Officer, Varanasi. It will be open to the landlord to file these documents before him. If legal effect may be seen by the Rent Control and Eviction Officer. The parties will be at liberty to file any document or evidence. The petitioner may file another objection to the rent note alleged to be executed on 20th July 1983.

6. Srr Nathani and Sri Singh both agree that the petitioner is a tenant at the rate of Rs. 200/ per month. The dispute between them is about the beginning of the tenancy. Sri S.N. Singh has given undertaking before this Court that the petitioner will pay the entire arrears of rent after adjusting any amount he has deposited in the Court within one month from today and will continue to pay rent at the rate of Rs. 200/ per month to the landlord by 7th of every month.

7. The parties will appear before the Rent Control and Eviction Officer, Varanasi on 15th of November 1999. By that date the parties may file any evidence which they wish to file and the petitioner may also file another objection against the rent note dated 20th Jury, 1983. Since this is a very old matter, the Rent Control and Eviction Officer thereafter may expeditiously decide the case at early date and if possible within three months from that date.

8. It is made clear that the Rent Control and Eviction Officer may decide the controversy without being influenced with any observation made in this judgment. The rent given by the tenant or its acceptance by the landlord will not

prejudice their rights.

9. The record of the Rent Control and Eviction Officer was also summoned in this case. The office will see that the record is sent back at an early date.

10. With the above directions the writ petition is disposed of. Petition disposed of.