

(2009) 07 AHC CK 0137

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 32003 of 2008

Jagat Narain Tiwari

APPELLANT

Vs

Additional District Judge, Kanpur Nagar and others

RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12

Citation : (2009) 07 AHC CK 0137

Hon'ble Judges : D.P.Singh, J

Final Decision : Allowed

Judgement

D.P.Singh, J.—Heard counsel for the parties.

2. Premises no.13/183, Parmath, Kanpur Nagar consisting of a room, verandah, kitchen, latrine, situated in the first floor of the building was allegedly in the tenancy of Late Shambhu Dayal Shukla of which the petitioner was the landlord. Pradip Bajpai, a prospective allottee, moved an application with the allegation that Shambhu Dayal had shifted to premises no.13/77, Parmath in Kanpur and has given the possession thereof to her daughterinlaw Smt. Ranjana Shukla, who was illegally occupying it without any order of allotment and therefore claiming deemed vacancy, sought its allotment. The Inspector submitted its inspection report dated 3.6.2006 that Sri Shambhu Dayal had vacated the premises in 2004 and it was in the occupation of Smt. Ranjana Shukla. After notice to all, the Rent Controller vide a detailed order dated 27.2.2008 held that the premises was deemed vacant and he fixed a date for considering the release application and the allotment application. Subsequently, the Rent Controller vide its order dated 22.4.2008 released the premises in favour of the petitioner and rejected the allotment application. Aggrieved, the respondents 2 to 6 preferred a revision before the District Judge, Kanpur which has been allowed by the impugned order dated 29th May 2008.

3. It is urged that the revisional court travelled beyond its jurisdiction in setting

aside the order of the Rent Controller and ignoring his categorical findings of fact has illegally assumed the facts which were neither pleaded nor proved before it and further made unwarranted remarks against the petitioner and the Rent Controller.

4. The Rent Controller in his detailed order has relied upon several documents to show that Shambhu Dayal in fact had vacated the premises in 2004 and handed over its possession to his daughterinlaw and shifted to 13/77 Parmath, Kanpur. It relied upon his own admission while executing a vakalatnama in July 2004 in favour of his lawyer in a injunction suit no. 586 of 2004. It also relied upon the fact that his daughterinlaw had applied for and obtained a new electric connection in her own name declaring that she was residing in her own right in the disputed premises. It also relied upon the application of the daughterinlaw to the Area Rationing Officer for deleting her name from the ration card of Shambhu Dayal and seeking ration card in her own independent name and mentioning her residence at 13/183 Parmath, Kanpur. It took notice of five yearly assessment record of the local authority which showed that his name as tenant did not find place after 2004 in the premises. These documents could neither be sufficiently explained away nor rebutted either by Ranjana Shukla or her fatherinlaw Shambhu Dayal. The case of Shambhu Dayal was that he was a Pujari and he used to go there every morning and return in the evening but he had not changed his residence. In the revision, the learned Judge apart from casting unwarranted aspersion on the petitioner and the Rent Controller, relying upon the ground of revision held that though Shambhu Dayal may have been allotted a room in the temple that would not result in any deemed vacancy.

5. Section 12(3) of the U.P. Act No.13 of 1972 provides as under:

"12. Deemed vacancy of building in certain cases.

(1)

(2)

(3) In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy :

Provided that if the tenant or any member of his family had built any such residential building before the date of commencement of this Act, then such tenancy shall be deemed to have ceased to occupy the building under his tenancy upon the expiration of a period of one year from the said date."

6. Its perusal shows that where a tenant or any member of his family living with him acquires any premises, it would be a case of deemed vacancy. A learned Single Judge of this Court in the case of Shiv Sunder Dwivedi vs. Rent Control & Eviction Officer (2008 (3) ARC 722 = 2009 (74) ALR 297, after relying upon

several judgments of this Court as well as of the Apex Court has held that once tenant or any member of his family acquires any premises in vacant state, it would be a case of deemed vacancy under Section 12 (3) of the Act. The learned Judge has further held that the word "acquires" as used under Section 12(3) of the Act has a very wide meaning and therefore in the opinion of the Court, even such a person would be covered by the deeming provision. In the counter affidavit filed on behalf of the respondent, a categorical statement has been made that Shambhu Dayal had been given a room in the temple.

7. The revisional court after recording a finding that Shambhu Dayal has been allotted a room in the building of the temple, goes on to hold that "it does not raise a presumption that he has vacated the disputed accommodation. His family consists of four revisionists and the wife of Sanjai Kumar Shukla were living in the tenanted accommodation with him." It has glossed over in a perfunctory manner the voluminous evidence to show that Smt. Ranjana Shukla wife of Sanjai Kumar Shukla had claimed independent possession of the tenanted premises. The revisional court travelled beyond its jurisdiction in reappreciating the facts without recording a finding that the conclusions reached by the Rent Controller were perverse. Neither an appellate court nor a revisional court can set aside a finding of fact recorded by the initial court of fact on the ground that another view was possible on those set of facts. Thus, in the opinion of the Court, the revisional order cannot be sustained.

8. For the reasons above, this petition succeeds and is allowed and the revisional order dated 29th May 2008 is hereby quashed and that of the Rent Controller is affirmed. However, no order as to costs.