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**(1999) 01 AHC CK 0035**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 408 of 1999**

Jagdish Prasad Srivastava

APPELLANT

Vs

Xth Addl. District and Sessions Judge, Kanpur Nagar and  
others

RESPONDENT

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**Date of Decision : 11-01-1999**

**Acts Referred:**

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —  
Section 12, 12(3), 14, 16  
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972  
— Rule 8(1)

**Citation : AIR 1999 All 290 : (1999) 1 AWC 733**

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

**Bench : Single Bench**

**Advocate : S.M.A. Kazmi, for the Appellant;**

**Final Decision : Dismissed**

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## Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 4.4.1988 passed by the Rent Control and Eviction Officer and the order dated 28.11.1990 allotting the accommodation in question to respondent No. 3 and the order dated 24.12.1998 passed by respondent No. 1, dismissing the revision against the aforesaid order.

2. The facts in brief are that father of the petitioner was tenant of the disputed accommodation. He built up his own house No. 124/120. C-Block, Govind Nagar, Kanpur. An application was filed by the landlord for release of the disputed accommodation on the allegation that Sundar Lal Srivastava, the tenant having built his own house and having shifted there, the accommodation in question be declared as vacant. The Rent Control and Eviction Officer, after making an inquiry found that Sundar Lal Srivastava had built up his own house No. 124/120, C-Block, Govind Nagar, Kanpur and having shifted there, the accommodation in question is vacant. The application for release filed by the landlord was rejected and on the , finding that the need of respondent No. 3 was bona fide, allotted to

him vide order dated 28.11.1990. The petitioner preferred a revision against the said order. The revision has been dismissed vide impugned order dated 24.12.1998.

3. I have heard Sri S.M.A. Kazmi, learned counsel for the petitioner and Sri A. N. Sinha. learned counsel for the respondent.

4. The main thrust of argument of learned counsel for the petitioner is that the accommodation in question could not be taken as vacant. It is not denied that his father Sundar Lal Srivastava was tenant of the disputed premises. In paragraph 4 of the writ petition, he has categorically stated that his father was tenant of the premises in question. It is also not denied that his father had constructed his own house. The accommodation in question had been declared as vacant on the ground that his father has constructed his own house and has shifted there. If a tenant builds his own house in the same city, the accommodation shall be treated as vacant under sub-section (3) of Section 12 of the U. P. Act No. 13 of 1972. There is no averment that his father did not build his house or shifted therein.

5. The submission of the learned counsel for the petitioner is that the petitioner is in occupation of the disputed accommodation since the year 1975 and his possession shall be deemed as regularised u/s 14 of the Act. His father was tenant of the accommodation in question. After his father had built up his house, the petitioner who was living with his father cannot be taken as tenant in his own right. Section 14 of the Act is not applicable in these circumstances.

6. It is next contended that the Rent Control Inspector submitted the report without complying Rule 8 of the Rules framed under the Act. The landlord had not let out the accommodation in question to the petitioner. His father was a tenant. He has not challenged the order. It is further not alleged that his father had not built up the house. On the admitted facts that his father was tenant and he had built up his house and shifted therein. the accommodation in question shall be treated as vacant. Even if, the petitioner was not given a notice by the Rent Control Inspector before submitting the report, on the admitted facts, the accommodation in question shall be taken as vacant.

7. It may further be noted that the petitioner himself had applied for allotment of the disputed accommodation. In case he had applied for allotment of the accommodation, it presupposes that he himself treats the accommodation in question as vacant. In *Shobran Singh Sharma v. IVth Addl. District and Sessions Judge, Aligarh* 1993 (2) ARC 421 it has been held that where the petitioner himself invokes the jurisdiction of the Rent Control and Eviction Officer for allotment stating that either the building was vacant on the date when the application for release was filed or was likely to fall vacant, it was open for him to show that there was no vacancy. Learned counsel for the petitioner has placed reliance upon the decision *Ashok Bhargava v. R. C. and E. O. and others* 1994 (2) ARC 272. wherein it was held that if the notice was not served by the Rent

Control Inspector as provided under Rule 8 (2) of the Rules, the order declaring vacancy is illegal. The same view was expressed in Roman Catholic Diocese of Agra Ltd. v. Rent Control and Eviction Officer, Agra 1991 12 ARC 204 and Kumari Asha Raina v. R. C. and E. O., Dehradun and others. These cases have no application to the facts of the present case.

8. The last submission of learned counsel for the petitioner is that the petitioner had also filed application for allotment. His application was not considered by the Rent Control and Eviction Officer. The petitioner also urged this point before the revisional authority. The revisional authority has also considered this aspect of the case. He has found that the petitioner was living with his father who was tenant of the accommodation in question. His father built up another house and shifted therein. As the petitioner was living with his father and he built up another house, the need of respondent No. 3 shall be taken to be more genuine and pressing than the need of the petitioner. The Impugned orders do not suffer from any manifest illegality.

9. The writ petition is accordingly dismissed.