
(2002) 05 AHC CK 0140
In the Allahabad High Court
Case No : C.M.W.P. No. 39544 of 2001

Jai Narain Agrawal

APPELLANT

Vs

Rent Control and Eviction Officer and Others

RESPONDENT

Date of Decision : 09-05-2002

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 16, 16(5)

Citation : (2002) 3 AWC 2350

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : Rajesh Tandon and Rama Goel, for the Appellant; P.K. Jain and V.C. Rai, S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

A.K. Yog, J.—This is a writ petition under Article 226. Constitution of India, seeking to challenge declaration of vacancy vide order dated 19.11.2001 (Annexure-12 to the writ petition).

2. The dispute relates to the premises No. 19-E/14. Gujrati Street. Moradabad. Respondent Nos. 2, 3 and 4 are the landlords. The petitioner was inducted with the tacit consent of the landlord in May. 1995 on a rent of Rs. 1.500 per month plus tax. Admittedly, the provisions of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. U. P. Act No. XIII of 1972 (for short called "the Act") were applicable to the said premises. It is not disputed that the landlord let out the accommodation in breach of the statutory obligations contemplated under Act. i.e., letting out premises in flagrant violation of the Act.

3. Initially landlord wanted to evict the petitioner-tenant (unlawful tenant being without allotment order under the Act), which compelled him to file suit No. 26 of 1999 seeking decree of injunction restraining the landlord to evict him by force. The injunction was granted by civil court (Annexure-1 to the writ petition). Thereafter, one Ram Mohan Agarwal filed an application for allotment of the

premises in question under the Act. According to the petitioner, ex partes proceedings for vacancy were initiated without notice as contemplated under Rule 8 of the Rules framed under the Act (paras 9 and 10 to the writ petition). Rent Control and Eviction Officer vide order dated 14.12.1999 declared the vacancy (Annexure-4 to the writ petition) and thereafter allowed the release application in favour of the landlords vide order dated 15.2.2000.

4. Petitioner filed Writ Petition No. 10953 of 2000, which was disposed of finally by the learned single Judge with the observations that petitioner-tenant be given an opportunity to file objection and in case such an objection is filed, the Rent Control and Eviction Officer shall pass reasoned order after considering the objection of the petitioner within one month from the date of receiving the objection ; copy of the High Court order dated 29.2.2000 has been filed as Annexure-6 to the writ petition.

5. In pursuance to the High Court order petitioner filed an application u/s 16(5) of the Act. Rent Control and Eviction Officer after considering the objections and the material brought on record by the parties by way of evidence, praying for reviewing of the order of release/ vacancy, rejected the aforesaid application vide order dated 19.11.2001 (Annexure-12 to the writ petition).

6. Feeling aggrieved, petitioner filed present petition praying for issuance of a writ in the nature of cer-tiorari quashing the impugned order dated 19.11.2001 (Annexure-12 to the writ petition) passed by the Rent Control and Eviction Officer. The petition was filed before this Court way back in November, 2001. Copy of the petition and its notices were given to the learned counsel appearing for respondent-landlord who had appeared before this Court on behalf of the landlord as Caveator. No counter-affidavit has been filed. Particularly, the averments contained in paras 1 to 5 of the writ petition wherein petitioner categorically stated that he was Inducted as tenant in the premises in question with the consent of the landlord.

7. Sri Rajesh Tandon, senior advocate, submitted that in view of the decision of this Court in the case of (0 Jagdish Vs. District Judge, Kanpur and Others, : (ii) Rafat Ahmad Jamal Alvi Vs. Rent Control and Eviction Officer, Allahabad and Others, and (iii) judgment and order dated 9.5.2002 in Writ Petition No. 55 o/ 2000. R. N. Sehgal v. District Judge. Kanpur Nagar and others, this Court has held that where landlord and tenant are abettor in by-passing provisions of the Act, and manipulate in inducting an "occupant" as tenant, then such a landlord cannot maintain "release" application under the Act.

8. Learned counsel for the petitioner also referred to the case of R. K. Parasher v. Dinesh Kumar and others. 2000 (1) ARC 557 (SC). wherein Supreme Court held that a person, who has been inducted in a premises governed by the provisions of the Act. is not excluded from maintaining allotment application and his application for allotment should also be considered in accordance with the relevant rules.

9. Learned counsel for the contesting landlord-respondent, submitted that the petitioner had an alternative remedy of filing revision u/s 18 of the Act against the impugned order dated 19.11.2001 (Annexure-12 to the writ petition) and have the petition was not maintainable. He also argued that in view of the earlier order of the High Court dated 29.2.2000 (passed in Writ Petition No. 10953 of 2000 by Hon"ble S. N. Agarwal, J.) the petitioner should not be permitted to challenge the order of release which has become final between the parties.

10. It will be noted that the landlord has filed no counter-affidavit. No preliminary objection regarding its maintainability, as above, was raised when this Court passed order dated 29.11.2000, which (relevant extract) reads :

"It is not disputed at the Bar that one of the question raised in the present petition namely whether landlord who had let out accommodation under the provisions of U. P. Act No. XIII of 1972 without allotment order and in breach of the provisions of the said Act can be permitted to have premium of his own act by seeking release application u/s 16 of the Act, is involved in W. P. No. 55 of 2000, Sri Ram Nath Sehgal v. District Judge, Kanpur Nagar and others and several other connected writ petitions.

On the joint request made at Bar this question shall be decided by the Court, since several petitions are awaiting decisions on the issue. It is also stated that above referred Writ Petition No. 55 of 2000 is tied up with this Bench.

In view of the above, I direct this petition to be listed along with Writ Petition No. 55 of 2000 and all other connected writ petitions in the supplementary cause list on 5.12.2001 showing full particulars of each case and the names of the learned counsel appearing for the parties separately for further hearing.

Until further orders, the parties shall maintain status quo."

11. The limitation for filing revision u/s 18 of the Act has now expired. Moreover, this petition can be decided on the basis of legal Issues on admitted/ undisputed facts. There is, therefore, no justification for dismissing the petition on the ground of alternative remedy at this stage.

12. As far as the second submission of the learned counsel for the petitioner is concerned, I find "that the learned single Judge by means of the impugned judgment and order dated 29.2.2000 required the present petitioner to file objection (within ten days of the said order dated 29.2.2000) before Rent Control and Eviction Officer against the order dated 14.12.1999, declaring vacancy and order dated 5.12.1999, releasing the accommodation in question and decide the matter after giving an opportunity of hearing being afforded to the concerned parties. It impliedly meant that the order declaring vacancy as well as subsequent order of release cannot be said to be final vis a vis the present petitioner. The Rent Control and Eviction Officer is justified in treating the order dated 19.11.2001, as rescinded order or recalled after the said judgment of the High Court.

13. On behalf of the respondents, it is submitted that the petitioner file no objection in pursuance to the aforementioned order of the High Court, and, however, preferred to file review application u/s 16 (5) of the Act.

14. It will be appreciated that filing of the objection or filing of application u/s 16 (5) of the Act, being for the same purpose, made no difference and will be treated sufficient compliance of the High Court order in the facts on the instant case.

15. Sri Rajesh Tandon, senior advocate, further drew notice of this Court to the objection dated 8th March, 2000 (Annexure-13 to the writ petition), which, according to him, were filed in pursuance to the aforementioned High Court order dated 29.2.2000.

16. The objections raised on behalf of the respondents are thus not sustainable.

17. No other point has been urged and pressed.

18. In view of the decision rendered by this Court in the case of Jagdish (supra), the impugned order dated 19.11.2001 (Annexure-12 to the writ petition) passed by the Rent Control and Eviction Officer/ Respondent No. 2 to the extent it directed for consideration of the release application cannot be sustained and liable to be quashed to the extent it directed for declaration of vacancy is affirmed.

19. The concerned Rent Control and Eviction Officer/Delegated Authority is directed to notify and publish the vacancy in accordance with relevant Act/Rules and judgment of this Court, and pass order of allotment in accordance with law.

20. Writ petition partly allowed, after calling for the record, the Impugned order dated 19.11.2001 (Annexure-12 to the writ petition) to the extent it fixed date for consideration of the release application is quashed ; the writ petition is, however, partly allowed to the extent that the impugned order whereby "Vacancy" in respect of the accommodation in question (No. 19E/14, Gujrati Street, Moradabad) is confirmed.

21. In the result, the writ petition stands partly allowed to the extent as indicated above.

22. No order as to costs.