

(1998) 08 AHC CK 0096
In the Allahabad High Court
Case No : C.M.W.P. No. 6535 of 1983

Jhabbo Lal (Dead) through L.Rs.	Vs	APPELLANT
District Judge, Dehradun and others		RESPONDENT

Date of Decision : 19-08-1998

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 14, 16, 2A, 3

Citation : (1999) 1 AWC 319

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : V.P. Misra, H.E. Rastogi, Sanjai Misra, Shashi Kant, Rishi Ram, Virendra Singh, Murlidhar and S.K. Garg, for the Appellant; S.C. and L.P. Naithani, for the Respondent

Final Decision : Dismissed

Judgement

J.C. Gupta, J.—This is landlords writ petition arising out of the judgment and order dated 13.4.1983 passed by respondent No. 1. The dispute relates to a residential accommodation situate at 22. Subhash Road, Dehradun. In the year 1952 the disputed accommodation was let out to the U. P. branch of the "Harijan Sewak Sangh" (an organisation looking after the welfare of weaker section), through the Honorary Secretary, respondent No. 2 who besides running the office of the Sangh in the disputed accommodation also used a major portion of the same as his residence since the inception of the tenancy and paid rent to the landlord. The Sangh shifted its office lock stock and barrel from Dehradun to Lucknow in the year 1965 and left accommodation in question in the sole occupation of respondent No. 2. With the shifting of the office, the respondent No. 2 who was the Honorary Secretary ceased to have any concern with or interest in the activities of the Sangh but he continued to be in occupation of the disputed house and himself paid rent to the landlord till the year 1977.

2. On 6.12.1978, the respondent No. 2 moved an application before the Rent

Control and Eviction Officer, Dehradun (in short R.C. and E.O.) for making a formal order of allotment in his name after regularising his occupation u/s 14 of the U. P. Act No. 13 of 1972, (hereinafter referred to as the Act) as he has been occupying the disputed house as tenant all throughout the period after the shifting of the office of the Sangh in the year 1965. A letter dated 7.12.1977 of the Sangh addressed to the R.C. and E.O. was also annexed with that application. Through that letter the Secretary of the Sangh informed the R.C. and E.O. that the Sangh had vacated the disputed premises in the year 1965 and thereafter it had no concern with it and the Sangh would have no objection if the house was allotted to the respondent No. 2. The landlord petitioner also made an application for release of the house in question infer alia alleging that the occupation of respondent No. 2 was unauthorised and a deemed vacancy has occurred.

3. The R.C. and E.O. by the order dated 19.7.78 rejected the landlord's application for release holding that in the facts and circumstances of the case, no vacancy in law had occurred. This order was challenged by the landlord in revision. The revisional court set aside the order of the R.C. and E.O. and remanded the case for a fresh decision on the question of vacancy as in its opinion, nature of the occupation of respondent No. 2 was not properly and thoroughly investigated by the R.C. and E.G.

4. After (he remand the R.C. and E.G. by the order dated 19.10.1982 held that the respondent No. 2 was not entitled to the protection of Section 14 of the Act and his occupation in the disputed premises was unauthorised. By the same order, the house in question was released in favour of the landlord-petitioner. The respondent No. 2 challenged the said order in the revision before the respondent No. 1 and the revisional court by the order dated 13.4.83 set aside the order of the R.C. and E.O. dated 19.10.82 holding that the occupation of the respondent No. 2 stood regularised under the provisions of Section 14 of the Act and consequently the building in question was not vacant. With these findings, the release order made in favour of the landlord has also been quashed. Aggrieved by the said order, the landlord has approached this Court by means of the present writ petition.

5. Counsel for the parties have been heard at length.

6. The moot question involved in the present writ petition is whether on the admitted and proved facts, the occupation of respondent No. 2 stood regularised u/s 14 of the Act?

7. Section 14 of the Act runs as under :

"Notwithstanding anything contained in this Act or any other law for the time being in force, any licensee (within the meaning of Section 2A) or a tenant in occupation of a building with the consent of the landlord immediately before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976, not being a person against whom any suit

or proceeding for eviction is pending before any Court or authority on the date of such commencement shall be deemed to be an authorised licensee or tenant of such building."

The Amendment Act referred to in the above section came into force on 5.7.1976.

8. A perusal of Section 14 would show that a tenant seeking protection of this section has to establish the following conditions :

(i) that he was in occupation of the building before the commencement of the Act, i.e., before 5.7.1976 : .

(ii) that his occupation as tenant has been with the consent of the landlord ; and

(iii) that no suit or proceeding for eviction was pending before any Court or authority on the relevant date, i.e., 5.7.1976.

9. If the above conditions are proved to be existing, such occupation by a legal fiction is deemed to be authorised. This section is thus. In the nature of an exception to Section 13, which puts complete restriction on occupation by any person, of a building without allotment or release order and further states that if a person occupies any building otherwise than an order of allotment or release u/s 16, he shall be deemed to be an unauthorised occupant. The Legislature while imposing complete ban on unauthorised letting, in its wisdom thought it prudent to save those bona fide tenants who had entered into occupation with the consent of the landlord prior to July 5, 1976. Section 14 begins with a non-obstinate clause "notwithstanding anything contained in this Act or any other law for the time being in force". It, therefore, has an overriding effect. Where conditions contained in Section 14 are proved to exist, the occupation gets statutorily regularised and for that no specific order is required to be made. Section 14 in itself embodies statutory fiction and courts and authorities are bound to proceed on an assumption that such a state of affairs existed on the relevant date. Once it is proved that the tenant has been in occupation of the building with the consent of the landlord immediately before July 5, 1976 and against whom no case for eviction was pending on that date, the Courts will presume that he is an authorised occupant even though there is no order of allotment in his favour.

10. One of the most essential ingredients for the applicability of Section 14 of the Act is that occupation of the tenant on (he relevant date was with the consent of the landlord. The expression" with the consent of the landlord" will mean in ordinary course "with the permission of the landlord. Such permission may be express or implied. There is no difficulty as regards express consent, but Courts often find it difficult to understand and interpret the meaning of "implied consent". There may be cases where there might not be any express agreement of tenancy between the landlord and the occupant but by his own conduct, the landlord permitted the occupier to occupy the building at all material lime and also accepted rent from him. In such cases, it could be inferred that the landlord

has by acquiescence or estoppel consented to the continuance of the occupation of that person as a tenant. This example has been given only by way of an illustration and no hard and fast rule can be laid down as to on what strait jacket formula implied consent could be inferred. The answer to such a question will depend upon the own facts of each case. Whether "implied consent" is also included in the expression used in Section 14 came up for consideration in a number of decisions and 1 may refer to some of them.

11. In the case of *Rajendra Kumar and others v. District Judge, Bulandshahr and others* 1983 ARC 793. It was observed :

"Tenant is defined u/s 3 (a) of the Act to mean a person by whom rent is payable. Who can be such a person under the Act. The one to whom the premises are allotted under the Act or who enters into agreement with the landlord. This is, either there is contract created by statute or by act of parties. Latter may be in writing or oral as an agreement or contract to be binding need not necessarily be in writing unless expressly provided. Agreement may also be inferred or it may arise by conduct of parties. For instance acceptance of rent by landlord paid by a person in occupation as tenant. It may also arise by acquiescence or estoppel, a principle founded on justice and fair play provided it is established that representation was made, it was acted upon and the representee altered its position to its prejudice. If these three are established then the person who by representation or conduct induces reasonable belief that he consented to it shall be precluded from going back on it. If a man either by words or conduct has intimated that he consents to an act which has been done and that he will offer no opposition to it although it could not have been lawfully done without his consent and he induces others to do that from which they otherwise might have abstained he cannot question the legality of the fact he had so sanctioned."

12. It was further observed that length of possession and passage of time are circumstances which" Strongly lean in favour of the occupant. In this case the occupant was in possession since 1965 but the rent receipts were issued till 1976 in the name of Ram Autar because tenancy was continuing in the name of Ram Autar. The trial court accepted the explanation of the occupant that rent was being paid in the name of Ram Autar with the understanding between the landlady and the occupant and the petitioner was finding it difficult to get the premises allotted in his favour since the building was governed by the Rent Control Act. The revisional court set aside the trial court's order holding that no tenancy could be inferred from possession only and in the absence of any rent receipts either from the previous owner or the present owner, no consent could be assumed in favour of the occupant. The revisional court was also of the view that the occupant could utmost be assignee or transferee but in the absence of any privity of contract between the landlady and the occupant, he could not be held to be a lessee. This Court, however, took the view that continuance of possession coupled with absence of any action of the landlady till the application

for regularisation u/s 14 of the Act was made by the occupant, gives rise to a reasonable inference that the landlady was not only aware but agreed by her conduct to the arrangement of the tenant entering into possession and paying rent in the name of Ram Autar. By her own conduct, therefore, the landlady was estopped and agreement in continuance of occupant's possession subject to payment of rent may be in name of Ram Autar. has to be inferred. The landlady could not have been in doubt about the person who was paying the rent. Its effect could not be wiped off by camouflage in issuing receipt in the name of Ram Autar. It is not an unknown phenomenon in our society. To keep the grip tight over tenant, the landlord at times resorted to practice of not issuing any receipt or in some cases to issue it in the name of another so as to suit to his advantage by alleging sub-letting as there is no limitation in the Act for taking action against such occupant. Therefore, non-issuing of receipt or issuing it in name of erstwhile tenant is not decisive of privity of contract or relationship of landlord and tenant.

13. Hon"ble K. C. Agrawal, J.. in the case of Smt. Keshar Bai and another u. District Judge, Mathura and another 1980 ARC 452 also took the view that the expression "consent" used in Section 14 includes both express and implied consent. It was observed :

"Section 14 of the U. P. Act No. 13 of 1972 uses the expression "consent". The expression "consent" means voluntary agreement by a person in the possession and exercise of sufficient mentality to make an intelligent choice to do something proposed by other (see Black's Dictionary!). Consent is an act of active acquiescence, an active circumstances of concurrence. Some times consent is synonymous merely with waiver. It can be express or implied. An express consent is that which is declaration given, either viva voce or in writing. It is positive, direct and unequivocal consent. Implied consent, to the contrary, is that which is manifested by signs, acts or (acts, or by inaction or by licence, which raised a presumption that the consent has been given. In the present case, the word "consent" has to be understood as implying within its ambit both express consent. Section 14 may be taken advantage of even by a person who is liable to demonstrate that he had implied consent of the landlord in his favour."

14. In this case the District Judge refused to give benefit of Section 14 on the ground that the receipts were given by the previous landlord in the name of a firm. From the fact of issuing receipts to the firm, learned District Judge concluded that the landlords did not know the actual position regarding changes in the family of original tenants. This Court held that the view taken by the District Judge was erroneous.

15. In another case of Jagannath v. D. J. Mathura and others. 1977 ARC 425, the question whether relationship of landlord and tenant could arise by conduct arose for determination. The facts of that case were that the shop in dispute was taken on rent by tenant's real brother nearly 20 years ago when the tenant-petitioner was a minor. The original tenant Sita Ram, the brother of the petitioner-tenant

shifted to Dehradun and established a separate business. The younger brother continued in possession of the shop in question and paid rent to the landlord for the last 15 years. The landlord based his claim on the ground of sub-letting. The R.C. and E.O. dismissed the landlord's application for release on the finding that sub-letting was not established. It was further found that the predecessor of the landlord (own brother) accepted the petitioner as tenant before the present Act came into force. The appellate court, however, found possession of petitioner to be unauthorised as there was no evidence of admitting the petitioner to tenancy. The question that arose for consideration before this Court was whether the petitioner was a sub-tenant as claimed by the landlord or he was tenant in his own right. This Court held that a contract of tenancy can be express or implied. The Rent Control Act or the Urban Building Act does not lay down any specific manner of entering into the agreement, except where the tenancy is created under the Act itself by an order of allotment. Hon'ble R. M. Sahai, J., who decided the aforesaid case, made a reference to the following observation made by Anson in his book "Law of Contract" 22nd Edition page 29 :

"The intention of the parties is a matter of inference from their conduct and the inference is. more or less, easily drawn according to the circumstances of the case."

This Court held in the facts and circumstances of that case that the conduct of the landlord in accepting rent with the knowledge that the petitioner was carrying on business in his own right was sufficient to lead to an inference that the intention of the parties was to create the relationship of landlord and tenant. It was further held that the payment of rent is offer and if rent is accepted by the person who is competent to receive it then implied relationship of landlord and tenant arises. With these findings the writ petition was allowed and the order of the appellate authority was quashed.

16. In the case before me, the lower revisional court has held that respondent No. 4 has acquired the status of deemed tenant within the meaning of Section 14 of the Act as he was in occupation of the house in question on the relevant date as a tenant with the implied consent of the landlord. It has to be seen whether in the facts and circumstances of the case, this finding of the lower revisional court was against law. The admitted and proved facts of the case may be summarised as under :

"The house in question was let out by the landlord to the Sangh in the year 1952. The respondent No. 2 occupied the same in the capacity of Honorary Secretary of the said Sangh, both for office and residential purposes. The Sangh shifted its office to Lucknow in the year 1965 and ceased to have any concern with the house in question since then. However, respondent No. 2 continued to remain in occupation thereof. It has also been found as a fact that the Sangh had informed the R.C. and E.O. that it had vacated the disputed house in the year 1965 and since thereafter it had no concern with the tenancy rights of the said house and it has also no objection to the regularisation of occupation of

respondent No. 2. It has also been found as a fact that there was not an iota of evidence to show that the said letter of the Sangh to the R.C. and E.O. was collusive or that the Sangh continued to remain in possession of the house in question even after 1965."

The landlord admittedly lived in the same compound with his son Lakshman who was closely connected with the Sangh inasmuch as he was the Secretary of the same for some time.

17. The certified copies of the municipal assessment revealed that the Sangh was recorded as a tenant of the premises only upto 1973 and since thereafter respondent No. 2 was recorded as tenant. The occupation of respondent No. 2 after vacation of the house by the Sangh was in his own independent capacity and the landlord had full knowledge of the same.

18. The rent was being consistently and continuously accepted by the landlord from respondent No. 2 upto 1977. Though the rent receipts were issued by the landlord in the name of the Sangh but the rent was actually paid by respondent No. 2 himself in his personal capacity, and no objection was ever raised by the landlord against the change of character of occupation.

19. In view of the above facts and circumstances, the lower revisional court was fully justified in drawing an inference that the landlord has impliedly consented to the continuance of occupation of respondent No. 2 in the house in question as tenant and the mere fact that the rent receipts were being issued in the name of the Sangh would not be enough to hold that the Sangh continued to be the tenant of the house in question till the year 1977. All the ingredients of Section 14 of the Act were thus found to be existing in the present case and on the facts established, the occupation of respondent No. 2 stood regularised u/s 14 of the Act by a statutory legal fiction, as such the house in question could not be deemed to be vacant and consequently, application for release moved by the landlord-petitioner was rightly rejected as being not maintainable.

20. For the above reasons, the impugned order does not call for interference and this writ petition must be dismissed.

The writ petition is accordingly dismissed. The parties are, however, directed to bear their own costs.