

(2012) 09 AHC CK 0172

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5808 of 1995

Kalicharan Agrawal

APPELLANT

Vs

Upper Ziladhikari/Rent Control and Eviction Officer and
Others

RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12(4), 16

Citation : (2012) 09 AHC CK 0172

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Agarwal. J.

1. This writ petition is directed against the order dated 19.04.2003 passed by Additional District Magistrate/Rent Control and Eviction Officer, Auraiya (hereinafter referred to as the "RCEO") rejecting application of respondent no. 3.
2. The respondent no. 3 has sought declaration of vacancy in the disputed shops No. 13 and 14, Homeganj Auraiya which are admittedly in possession of respondent no. 2 and owned by petitioner on the ground that respondent no. 2 is occupying the aforesaid shops unauthorisedly, i.e., without any order of allotment.
3. The RCEO has said that respondent no. 2 has been held to be a validly occupying tenant of shops in question by his predecessor in the office's (RCEO's) order dated 08.05.2000 which has become final.
4. The order dated 08.05.2000 was passed in P.A. Case No. 17 of 1995, initiated by present petitioner on an application filed under Section 2A(5) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act, 1972"). The RCEO therein has observed that there existed relationship of landlord and tenant between petitioner, Kalicharan

Agrawal (now deceased and substituted by legal heirs) and respondent no. 2, Radhey Shyam Shukla. However, a careful perusal of entire order dated 08.05.2000 shows that it has nowhere held or decided, whether occupation of shops in question by respondent no. 2 was valid and in accordance with procedure prescribed in Act, 1972 or not.

5. It is also not disputed by parties before this Court, i.e., petitioner and respondent no. 2 that the shops in question on the date the same were occupied by respondent no. 2, were governed by Act, 1972 and no order of allotment was ever issued in favour of respondent no. 2 before such occupation. It was a clandestine occupation allowed to respondent no. 2 by petitioner. Inter se, these two parties may be obliged to follow their agreement, if any, as held by Apex Court in *Nutan Kumar and others v. IInd Additional District Judge and others*. 2002(2) ARC 645 but so far as RCEO or prospective allottee is concerned, the occupation without order of allotment by a person would be wholly unauthorised and shall result in a "deemed vacancy" in the concerned premises. In this regard it would be useful to refer this Court's decision in *Geep Industrial Syndicate Ltd.. Allahabad v. Rent Control and Eviction Officer*. 1982(1) ARC 585. In para

13 the Court said:

"Section 11 and 13 of the present Act make that position very clear. No one now can either let out any premises without an allotment order nor can anyone occupy the same. If any one occupies the premises without an allotment order, he would not only be an unauthorized occupant but also liable to prosecution under section 31 of the said, Act. His possession being unauthorised cannot be recognised in the eye of law and if it cannot be recognised in the eye of law, there would be a vacancy. That would entitle the Rent Control and Eviction Officer under Section 16 to pass an allotment order."

6. To the same effect is the view taken in *Ajay Pal Singh and others v. District Judge. Meerut and others*. 2008(2) ARC 264 (paras 22 and 23).

7. Recently also this Court in *Sheela Devi (Smt.) v. Patanjali Mocate & others*, 2011 (3) ARC 401 has taken the same view as is evident from para 14 thereof, which reads as under:

"14. The premises in the possession of an unauthorized occupant would be deemed to be vacant for the purposes of Rent Control Act, even if an unauthorized occupant is inducted into the premises contrary to the provisions of the Act by the landlord himself, the legislature has not placed any restriction on the rent control authorities to initiate proceedings under Section 12 of the Act. So far as the release of such premises which are deemed to be vacant under Section 12 (4) of the Act is concerned, the application of release has to be considered on merit in accordance with law by the District Magistrate. The unauthorized occupant has no right to interfere in the aforesaid proceeding of release."

8. In view thereof it is clear that the impugned order has been passed on a sheer misreading of order dated 08.05.2000 and, therefore, cannot sustain.

9. in the result, the writ petition is allowed. The impugned order dated 19.04.2003 is hereby quashed. The RCEO is directed to proceed further on the application of respondent no. 3 and petitioner's application filed under Section 16(1) of Act, 1972 in accordance with law treating occupation of respondent no. 2, unauthorised, on the shops in question, and treating a "deemed vacancy" in the said premises. The RCEO shall take a final decision in the matter within a period of six months from the date of production of a certified copy of this order. No costs.