

(2001) 08 AHC CK 0085

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31174 of 2001

Kamla Devi

APPELLANT

Vs

Additional City Magistrate/R.C.and E.O., Kanpur Nagar and
Others

RESPONDENT

Date of Decision : 29-08-2001

Acts Referred:

Citation : (2001) 08 AHC CK 0085

Hon'ble Judges : Yatindra Singh, J

Final Decision : Disposed Of

Judgement

Yatindra Singh, J.—Sri Baldev Prasad husband of petitioner was original tenant of the premises in dispute. He died in 1989 leaving behind petitioner as well as two sons as heirs and they jointly became tenant of the premises in dispute. Respondent No. 2 filed an application for allotment of the premises in dispute on the ground that it has become vacant as one of son of petitioner namely, Sri Rakesh has obtained another residential building in the same municipality. Respondent Nos. 3 to 7 are landlord. They also filed an application for release of the same. Subsequently Respondent No. 1 by his order dated 28/2/2001 declared the premises to be vacant on the ground that son of the petitioner has acquired another accommodation in the same municipality, hence the present writ petition.

2. I have heard Sri K.K. Tripathi, Counsel for the petitioner and Sri A.K. "Srivastava, Counsel for the Respondents 3 to 7. Respondent No. 1 while declaring vacancy in the premises in dispute has not considered the affidavit filed by the petitioner that son of petitioner has not acquired another premises on the ground that this affidavit is not certified by any advocate. This is one of the major ground for rejecting the affidavit of petitioner and holding that there is unrebuted evidence on behalf of respondent that the son of the petitioner has acquired another premises. In case there was some defect in the affidavit filed by the petitioner then Respondent No. 1 ought to have granted time to remove the defect. There is nothing on record to show that Respondent No. 1 granted any

lime to remove the defect. In view of this, order dated 282001 is set aside. The case is remanded back for redecision on the question of declaration of vacancy. The parties may appear before the Respondent No. 1 on 17th September 2001. By that date the petitioner may file proper affidavit. Thereafter Respondent No. 1 may again decide the case in accordance with law.

With these observations the writ petition is disposed of. Petition disposed of