
(1998) 05 AHC CK 0085
In the Allahabad High Court

Kamla Pandey (Dr.)

APPELLANT

Vs

4th Addl.District and Sessions Judge, Agra and others

RESPONDENT

Date of Decision : 06-05-1998

Acts Referred:

Citation : (1998) 05 AHC CK 0085

Hon'ble Judges : Shitla Prasad Srivastava, J

Final Decision : Allowed

Judgement

1. This Petition under Article 226 of the Constitution of India has been filed by the petitioner for quashing the order dated 30.4.96 and to restore the order dated 30.1.84 passed by the Rent Control & Eviction Officer. The second relief as claimed by the petitioner is for issue of direction to respondent Nos. 2, 3 and 6 to deliver vacant possession of the shop in question to the petitioner on the same terms of tenancy as appears before the impugned order of allotment dated 21.7.93.

2. The brief facts for the purposes of the present writ petition are that one Rajendra Prasad Pandey who was father of the petitioner, was tenant in occupation of the aforesaid shop on behalf of Smt. Sarju Bai Mukharia, hereinafter referred as land lady. Rajendra Prasad Pandey died on 22.12.67 and was survived by his wife, the petitioner and Smt. Radha Gautam and Daya Shankar Pandey, son. The mother died on 18.12.69. It is stated that after the death of mother and father the petitioner herself, her brother Daya Shankar Pandey and Smt. Radha Gautam inherited the tenancy right in the shop in question and jointly carried on business in the shop and jointly paid the rent to the landlady. Drug licence for Pharmaceutical business was also obtained jointly in the name of the petitioner, her brother and respondent No. 4 and when the landlady refused to receive the rent the same was deposited under section 30 of the Act in Case No. 238 of 1973 which was allowed by the Munsif Court, Agra on 6.9.74. The petitioner got an employment as a teacher and professor but she never surrendered her tenancy right and the brother being the only male

member, used to sit in the shop and conduct the business in the same. He colluded with the landlady and alleging himself to be the sole tenant gave a false intimation of vacancy to the Rent Control and Eviction officer and simultaneously an application for allotment was filed by Smt. Urmila Devi, respondent No.2. Consequently allotment was made in her favour on 21.7.83 without any notice or intimation to the petitioner. After knowing this fact the petitioner applied for review/cancellation of the allotment order dated 21.7.83 moving application u/s 16(5) of the Act which was contested by Urmila Devi and her brother Daya Shanker Pandey. The allotment order was cancelled on 30.1.84. A revision against the order was filed by the allottee which was allowed on 30.4.96. The petitioner has challenged this order by means of the present writ petition.

3. Admittedly respondent no. 3 Smt. Sarju Bai Mukhariya was the owner and landlady of the shop in question and she admitted Rajendra Prasad Pandey, father of the petitioner, respondent Nos. 4 and 5 as tenant. The petitioner impleaded Smt. Sarju Bai Mukhariya as respondent No.3. It appears that during the pendency of the present petition, the owner landlady transferred the property in dispute to one Sri Mohan Lai Agarwal son of Padam Chand Agarwal. Therefore, an application was filed by the petitioner to implead Mohan Lal Agarwal as respondent No. 7 in this petition. The application was allowed. Sri V.M. Sahai, Advocate has filed his Vakalatnama on behalf of Mohan Lal Agarwal and has made statement that he will adopt the argument of contesting respondents.

4. A counter affidavit has been filed by Sri Anil Kumar as Pairokar of respondent No.2 i.e. Urmila Devi, the main contesting Party. In the counter affidavit it is stated that the petitioner never carried on business jointly in the shop in dispute. Her father died on 22.12.67 and mother died on 18.12.69. The petitioner is a teacher and was not doing any business in the accommodation in question. After death of her father she was either studying or employed and was not in position to do business. It is stated in para 10 of the affidavit that use of her name in Drug licence or litigation was a mere formality by her brother to avoid controversy. The petitioner is a senior permanent lecturer in the Department of Hindi in St. Johns College, Agra and as such she has no need of the shop in question. It is stated that the husband of the petitioner was a M.L.A., U.P. and was also a Minister during the Bhartiya Janta Party Government. He is an Advocate by profession and is a whole time politician.

5. Another counter affidavit has been filed by one Vinod Kumar Jain as Pairokar of respondent No. 7. In para 4 of this affidavit it is stated that Smt. Sarju Bai Mukhariya had sold the property in question in favour of Smt. Reshma Khurana and others who have subsequently sold it to Mohan Lai Agarwal in November, 1994 who is in possession and the owner of the property in question.

6. A supplementary counter affidavit has been filed by Smt. Urmila Devi respondent No.2. She has replied every paras of the writ petition. In para 4 of this affidavit she has stated on oath that after the death of the original tenant

(Rajendra Prasad Pandey), his son Daya Shankar Pandey (respondent No. 4), occupied the accommodation in question and the petitioner as well as respondent No.5, namely Radha Gautam have nothing to do with the property in question. It is stated that Rajendra Prasad Pandey was carrying on business alongwith his son Daya Shankar Pandey under the name and style of Prem Medical Stores for Chemist and Druggist business and after the death of R.P. Pandey his son D.S. Pandey alone continued the business of Chemist and Druggist in the said shop and continued to pay the rent to the landlord. His sister and mother never carried on any business in the said shop and the brother alone recognized as tenant by the landlord and as D.S. Pandey did not want to continue his tenancy and he intimated to the Rent Control & Eviction officer about his vacancy of the said shop. Smt. Urmila Devi was in need of the said and she applied for allotment and the landlord consented to the same and the same was allotted to the respondent no.2 and she got possession thereof. Her further contention is that mere deposit u/s 30 of the Act No. XIII of 1972 will not give any benefit to the petitioner and she was never tenant after the death of her father, rather tenancy was inherited by Sri D.S. Pandey the brother alone who was carrying on business of Medical store. In para 14 of the supplementary counteraffidavit the respondent stated that after the death of P.P. Pandey there was single tenancy which was devolved on the heirs and there is no division of premises or of the rent payable. Therefore, the application u/s 16(5) filed by the petitioner was not maintainable. The respondent has also filed some documents alongwith the supplementary counteraffidavit. 1st document is copy of the statement dated 24/10/70 alleged to have been made by the petitioner in case No. 15 of 1970 and the copy of the order dated 16.11.70 passed by the Civil Judge, Agra in Case No. 15/70. The other documents were also filed alongwith this affidavit which are the notice given to D.S. Pandey by the landlady and the reply of notice by D.S. Pandey and copy of various other orders and judgments of the sales Tax and other authorities. Two affidavits, one of Badri Prasad and the other of Afzal Ahmad have also been filed to prove that after the death of Rajendra Prasad Pandey, D.S. Pandey alone was the tenant. Affidavits of Basant Lai and Vijai Kumar have also been filed along with the supplementary counteraffidavit.

7. A rejoinder affidavit has been filed by the petitioner against the counteraffidavit filed by Anil Kumar.

8. Heard learned counsel for the parties. Sri K.M. Dayal learned Senior Advocate appearing on behalf of the petitioner has urged that the order passed by the Rent Control & Eviction officer making allotment is illegal as the petitioner was not party before the authority, nor she was informed of any proceeding. The entire proceeding was the result of a collusion between the landlady Daya Shankar and Smt. Urmila Devi. His further contention is that from the application which was filed u/s 30 it was apparent that the brother of the petitioner (Daya Shankar Pandey) admitted that the petitioner is also a cotenant alongwith Daya Shankar Pandey, therefore, in view of this statement made by Daya Shankar, the application filed by him u/s 16(5) alleging himself to be sole tenant was illegal

and against the fact and since the petitioner had not been given any notice, therefore, the allotment order treating the accommodation to be vacant is against the fact and against the law. He has placed before the court the order passed by the Rent Control & Eviction officer which has been filed as Annexure 8 to the writ petition. From perusal of this order it is apparent that the R.C. & E.O. has held that when application u/s 30 was filed by the petitioner, his brother did not object to it, rather it was stated that he was one of the cotenant along with the present petitioner. As such, when he was one of the cotenant and this fact was concealed in the allotment application and no notice was given to all the tenants, the allotment order was bad in law. His contention is that the order passed by the revisional authority is without jurisdiction because u/s 18 of the Act which is just like Section 115 of the CPC and when the finding of fact was given by the R.C. & E.O. to the effect that the petitioner was a cotenant along with Daya Shankar, the revisional authority could not have set aside that finding rather the matter should have been sent back to the Rent Control & Eviction Officer to decide the controversy afresh.

9. From the argument of learned counsel for the petitioner and from the pleadings of the parties in the shape of the writ petition, counteraffidavit and rejoinder affidavit as well as from the judgments of the two authorities, it is apparent that the property in question was of Smt. Sarju Bai Mukhariya and Rajendra Prasad Pandey, father of the petitioner as well as of Daya Shankar Pandey and Smt. Radha Gautam was tenant. It is also apparent that Rajendra Pandey was doing business of medicines in the shop in question and he left behind him his two daughters, one son and widow. Widow died subsequently. The dispute is only with regard to the devolution of the tenancy right which was with the deceased Rajendra Prasad Pandey. The petitioner's contention is that under the law after the death of the original tenant Rajendra Prasad Pandey, it devolved on two sisters, mother and the brother. The contesting respondent contends that as father and brother both were carrying on business jointly, therefore, after death of the father the son became sole tenant and the tenancy did not devolve on two daughters and the widow. Before discussing the points urged by learned counsel for the petitioner and its reply given by the learned counsel for the respondents it is necessary to see the relevant provisions of the Act. As both the parties are contending that the original tenancy was for nonresidential purpose i.e. for running a medical store therefore, the relevant law of devolution of such tenancy is to be seen under the Act.

Section 3 of U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972, (hereinafter referred to as, the Act) only defines "tenant" which is as under:

(a) "tenant", in relation to a building, means a person by whom its rent is payable, and on the tenant's death

(1) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) in the case of a nonresidential building, his heirs.

10. From the above definition it is crystal clear that as the accommodation in question was being used for nonresidential purpose, therefore, after death of Rajendra Prasad Pandey, the original tenant, his heirs will become tenant.

11. Section 12 of the Act deals with deemed vacancy of the building in certain cases. This section is quoted herein below:

Section 12 (1) A landlord or tenant of a building shall be deemed to have ceased to occupy the building or a part thereof if

(a) he has substantially removed his effects there from, or

(b) he has allowed it to be occupied by any person who is not a member of his family, or

(c) in the case of a residential building, he as well as members of his family have taken up residence, not being temporary, elsewhere.

(2) In the case of a nonresidential building where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or a new Partner, as the case may be, the tenant shall be deemed to have ceased to occupy the building.

(3) In the case of a residential building, if the tenant or any member of his family builds or otherwise acquires in a vacant state or gets vacated a residential building in the same city, municipality, notified area or town area in which the building under tenancy is situate, he shall be deemed to have ceased to occupy the building under his tenancy;

Section 15 of the Act deals with the obligation to intimate vacancy to District Magistrate which is quoted herein below

"Every landlord shall, on a building falling vacant by his ceasing to occupy it or by the tenant vacating it or by release from requisition or in any other manner whatsoever, give notice of the vacancy in writing to the District Magistrate not later than seven days after the occurrence of such vacancy, and such notice may at the option of the landlord be given before the occurrence of the vacancy.

(2) Every tenant so vacating a building shall give notice thereof in writing to the District Magistrate and also to the landlord not less than fifteen days before the vacancy.

(3) The notice under sub section (1) or sub section (2) shall contain such particulars as may be prescribed.

(4) The District Magistrate, on being satisfied on an application made to him in that there was sufficient cause for the landlord or the tenant not to give notice under subsection (1), or sub section (2) within time, may condone such delay.

12. Section 16 of the Act deals with allotment and release of vacant building: Subject to the provisions of the Act, the District Magistrate may by order:

(a) require the landlord to let any building which is or has fallen vacant or is about to fall vacant, or a part of such building but not appurtenant land alone, to any person specified in the order (to be called an allotment order), or

(b) release the whole or any part of such building, or any land appurtenant thereto, in favour of the landlord (to be called a release order);

13. From the reading of all these provisions of the Act it is clear that everywhere the word "landlord" and tenant have been used by the law framers. Section 12(1) says that the landlord and tenant of the building will cease to have occupied the building or part thereof if he has substantially removed his effects there from.

14. Section 15(2) cast a duty on every tenant on vacating the building to give notice in writing to the District Magistrate and also to the landlord. Section 16 gives power to the District Magistrate to pass orders regarding allotment and release of any building which is or has fallen vacant. Proviso added to this section says that in case of a vacancy referred to in sub section (4) of section 12, the District Magistrate shall give an opportunity to the landlord or the tenant, as the case may be, of showing that the said section is not attracted to his case before making an order under clause (a).

15. Section 12(4) says that any building or part which a landlord or tenant has ceased to occupy within the meaning of subsection (1), or subsection (2), or subsection (3), sub section (3A) or subsection (3B) shall for the purposes of this Chapter, be deemed to be vacant. It means that before making allotment u/s 16(5), the tenant has a right to be heard.

16. After analysis of all the aforesaid provisions it is apparent that the tenant's interest is paramount under the Act while considering the release and allotment matter. Now it has to be seen as to who were the tenants after the death of the original tenant Rajendra Prasad Pandey. The contention of respondent No. 2 in the written statement is that the father and son were both carrying on one and the same business, therefore, after death of father, the son becomes the sole tenant as it was single tenancy. This fact is denied to the petitioner. It is stated on behalf of the petitioner that father was the sole tenant and after his death the tenancy devolved on all the heirs of the father.

17. Sri K.M. Dayal has urged that the cotenant has no unity of title. Each one of the cotenant is the owner of his interest in the property, therefore, after death of father the tenancy will devolve in all the heirs and Daya Shankar Pandey alone could not inform the District Magistrate or surrender tenancy of all the cotenants. He has placed reliance on a case reported in 1969 ALJ 1116 Smt. Shafiq & others v Maqsood Ahmad Khan & others. In this case it has been held by this Court that the words "joint tenant" can be used both in respect of lessees,

lessors who have unity of title, and in case of the death of one of such title holders his title passes to the survivors. In a case where on the death of one of the lessees or one of the lessors the title passes to the heirs of the deceased. It cannot be said that there is a unity of title amongst the various title holders. In such an event, they would not be "joint tenants", but they will be "tenants in common". His further contention is that Daya Shankar Pandey could not surrender the tenancy. To support his contention he has placed reliance on Annexure1 to the writ petition which is a licence to sell, stock, or exhibit to sell or distribute by retail drugs specified. This licence has been issued by Drug Licensing Authority, Nagar Mahapalika, Agra on 1.1.70. and was valid for a period from 1.1.70 to 31.12.71 .The licence was issued in the names of Daya Shankar Pandey and Smt. Karnla Pandey, Partner. He has also placed reliance on a copy of the application filed by the petitioner and Daya Shankar Pandey jointly u/s 30 of the Act against the landlord of the house in question and copy of the order dated 6.9.74 passed by the learned Munsif permitting them to deposit the rent and the tender by which the rent was deposited. Learned counsel for the petitioner has also placed reliance on the written statement filed by Daya Shankar Pandey before the trial court in the proceeding u/s 16 (5) and has read para" 5 of the written statement where he has admitted that the shop in question was tenanted by Sri Rajendra Prasad Pandey, and that he was sitting jointly with his father during his life time and was jointly working and assisting his father and is continuing solely as tenant and as a proprietor in business. In para 11 of the written statement it is stated that right of devolution of the tenancy if any will be deemed to have been waived.

18. Learned counsel for the petitioner has urged that as Daya Shankar Pandey has admitted that his father was a tenant and he was only doing joint business with him and the tenancy should have been deemed to have waived, therefore, it is admitted that after death of father the tenancy devolves on the daughter also which could not have been legally waived. His contention is that if concealing this aspect of the case the allotment has been made in favour of the respondent, then it should be cancelled. He has placed reliance on a case reported in 1983 ARC (1) 357 Smt. Sakina v. The VIth Addl. District Judge, Meerut and others. His further contention is that the finding of the revisional authority that Daya Shankar was the only tenant is against the law and further that the finding that the daughters of Rajendra Prasad Pandey namely Smt. Kamia Pandey and Radha Gautam shall be impliedly deemed to have surrendered their tenancy right is also illegal, rather it speaks that they had some right and if they had some right there cannot be any surrender as observed by the revisional court. He submitted that the tenancy is the interest in the property, therefore, it can only be surrendered in accordance with the provision of law. His submission is that as a fraud was played on the petitioner as well as on the court by the allottee in collusion with her brother Daya Shankar Pandey, therefore, the allotment is bad in law. On the principle that the fraud vitiates every thing, he has placed reliance on a decision reported in 1979 ARC 463 Mohan Lai Agarwal v. Prescribed authority and others.

In this case it was held that if an allotment order had been obtained by practising fraud, the authority could review such order provided the order was based on fraud, misrepresentation. He has also placed reliance on a case reported in 1995 Supreme Court cases 706 Ballu Ram v. Mandir Tuhi Ram h"arnam Pass where the Supreme Court held that statutory tenancy is heritable. In that case also the definition of word tenant was considered by the court and there also, the tenancy was to be inherited by the heirs of the tenant after the death. His submission was that as a finding of fact was recorded by the Rent Control & Eviction officer that the information should have been given regarding vacancy by all the tenants and then only allotment should have been made and further that finding of fact has been recorded that after death of the original tenant his daughters and son are also cotenants. This finding of fact could not have been challenged under Section 18 of the Act in revision. According to learned counsel for the petitioner Section 18 provides that revision can be filed only on any or some of the grounds mentioned in Section 18. According to learned counsel for the petitioner in Section 18 same ground are mentioned as they are mentioned in Section 115 CPC and as the District Magistrate had jurisdiction to recall his order of allotment and he has failed to exercise the jurisdiction vested to him by law as a material irregularity was committed by him, the revision was not maintainable.

19. In reply to the arguments of Sri K.M. Dayal, Sri Ravi Kiran Jain, the learned senior Advocate has submitted that Section 18(2) gives power to the revisional authority either to confirm or rescind the final order made under Section 21 or to remand the case to the District Magistrate for rehearing and also to pass interim order. Therefore, when the revision was entertained by the revisional authority he has power to set aside the order on merit. Sri Jain has vehemently urged that the petitioner was in service and never carried on business in shop in question, rather she admitted in her statement given on 24.10.70 in Case No. 15 of 1970 before the District Judge, Agra which was filed by Km. Kamla Pandey against the institution in which she was teacher that her father was carrying on a medicines shop which is being carried on by his younger brother. He has also placed reliance on the order passed by the Court on 16.11.70 declaring the petitioner as pauper. His contention is that it appears that the applicant filed some suit as indigent person and she was not in position to pay the court fees and that the shop in question was in possession of her brother and she has no concern with it. He has also placed reliance on the list of documents filed by Smt. Urmila Devi before the revisional court and has urged that all these papers prove beyond any shadow of doubt that Daya Shankar Pandey was for all the purpose and by all the authority including the sales Tax department was considered to be sole proprietor of the business and that he alone paid the rent to the landlady, he also urged that there are independent witnesses who have filed their affidavits to the effect that Smt. Kamla Pandey was not the tenant nor she ever carried on business in the accommodation in question.

20. The argument of Sri Jain is that u/s 18 no doubt the grounds mentioned are that of Section 115 of the CPC but nonetheless if the ground which is irrelevant if

taken into account with others which are relevant, or a relevant ground, which exists, is unjustifiably ignored, it could be said to be a case of exercise of power under Section 47 of the Act which is a quasijudicial, in a manner which suffers from a material irregularity and will be covered by Section 115 CPC. He has placed reliance on a case reported AIR 1975 Supreme Court 123 Ajantha Transports Pvt. Ltd. Coimbatore v. M/s T.V.K. Transports, Pulampatti. His contention is that when the Prescribed Authority only considered the effect of application u/s 30 of the Act and came to the conclusion that the Daya Shankar Pandey and Kin. Kamla Pandey both were tenant and did not consider other materials regarding the surrender of tenancy and the documents. That was a material irregularity and revision was maintainable. He also urged that when the applicant Km. Kamla Pandey herself gave a statement on oath before the court in suit No. 15 of 1970 admitting that she has no concern with the shop in question, this document is a valuable piece of evidence and this cannot be explained otherwise. His contention is that this statement is in a judicial proceeding and is binding on the petitioner. He has placed reliance on a decision reported in AIR 1974 Supreme Court 471 Nagindas Ram Das v. Dalpatram Iccharam and others. In para 26 of the aforesaid judgment it is held that Admissions, if true and clear, are the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof.

21. On the point of surrender learned counsel for the respondent has urged that if Kamla Pandey was not doing any business in the accommodation in question, rather she was living away from the city where the disputed shop is situated and was doing a job it shall be deemed that she has impliedly surrendered the right and since this aspect of the case has not been considered by the Prescribed Authority the revisional court has rightly considered the other materials and has set aside the finding recorded by the Prescribed Authority. His contention is that when the parties were given opportunity to file documents by the revisional authority then the revisional authority had jurisdiction to decide the revision after considering that evidence and remand of the case is not proper. In support of his contention he has placed reliance on a decision reported in 1990 (1) ARC 561 Krishna Gopal Sharma v. IV Addl. District Judge, Aligarh and others. He has also placed reliance on a case reported in 1985 (1) ARC 450 Smt. Jugla Devi v. 1st Addl. District Judge & others that when the evidence of both the parties are on record the revisional authority should decide the case by applying its mind to such evidence and not to remand it for decision by the Rent Control and Eviction Officer. He has also placed reliance on a case reported in 1994 (2) ARC 404 Radhey Shyanri and another v. Addl. District Judge Unnao and another, that revisional authority has jurisdiction to entertain evidence on the point of subsequent events.

22. Sri Jain has submitted that the revisional court has rightly held that there

was an implied surrender of the tenancy. He has placed reliance on Section 111 of the Transfer of Property Act. According to this provision a lease of immovable property determines

Sub clause (e) by express surrender; that is to say, by mutual agreement between the parties or,

Sub clause (f) by implied surrender.

So the petitioner made a statement in the suit filed by her that she has no concern with the shop in question which was left by her father and the business of medicines. That would amount to implied surrender. For that purpose he has placed reliance on a decision reported in 1994(1) ARC 117 Abdul Sattar v. VI Addl. District Judge, Allahabad & others. He has further argued that if the trial court had erroneous impression of the legal position, revisional court has jurisdiction to rectify that mistake and it will not amount to reassessment of evidence but will amount to taking into consideration the evidence which has not been looked into by trial court and the finding given by the revisional court will be a finding of fact. Reliance has been placed by him on a case reported in 1984 (1) ARC 679 Jagdish Prasad v. Smt. Angoori Devi. He has also placed reliance on a case reported in 1983 (1) ARC 357 Smt. Sakina v. VI Addl. District Judge, Meerut & others for the purposes that if the allotment order has been obtained fraudulently an application u/s 16(5) is to be considered and the court should look into such allegation and decide it after considering the facts and circumstances of the case. His contention was that in this case it was evident from the documents available on then record that both the daughters never carried on business of medicines in the shop in question and rent receipts were in the name of Daya Shanker and the ladies were teaching at different places. The Prescribed authority did not consider this fact. His contention is that the Prescribed Authority lost the sight of the relevant piece of evidence, which was considered by the revisional authority. Therefore, the order under revision is justified and there is no illegality in it and it should be confirmed and the writ petition may be dismissed. In reply Sri K.M. Dayal learned counsel for the petitioner has urged that if the licence was initially issued in the names of Kamla Pandey and Daya Shankar Pandey and it was subsequently renewed only in the name of Daya Shankar Pandey that will not take away the right of the petitioner which she received as a cotenant by inheritance. He has further urged in reply that the documents which have been considered by the revisional authority, admission of the petitioner was not on record of the Prescribed Authority, therefore, it cannot be said that the Prescribed Authority has committed an error in giving the finding in favour of the petitioner. His contention is that when the finding was given by the Prescribed Authority, the revisional court had no jurisdiction to set aside that finding and record its own finding. For that purpose he has placed reliance on a case reported in 1985 (2) ARC 423 Irfan Ali v. IInd Addl. District Judge, Moradabad. He has also placed reliance on a case reported in 1986 (2) ARC 118 Ram Gopal Agarwal v. Vth Addl. District Judge, Meerut and others that the

revisional court has limited power.

23. After hearing learned counsel for the parties at length and going through the entire record I am of the view that the judgment of the Prescribed Authority appears to be a judgment in which the documents which have been referred by the revisional authority have not been considered, nor the two authorities have correctly considered the definition of the word "tenant" as given in the Act or under the provisions of the Transfer of Property Act so far as surrender of tenancy right is concerned, nor they have considered the provisions of Evidence Act and admissibility of the documents which was filed by the parties in shape of application u/s 30 of the Act, the statements given by the petitioner in the suit filed by her as indigent person, rent receipts issued in favour of respondent Daya Shankar Pandey. Therefore, the matter requires reconsideration. As the revisional authority has taken into consideration a number of documents and reversed the finding recorded by the Prescribed Authority which was passed without considering these documents, I think it a fit case in which the matter should be sent back to the Prescribed Authority to consider it afresh in accordance with law.

24. The writ petition is accordingly allowed. The judgment and orders dated 30.4.96 and 30.1.84 are hereby quashed. The matter is being sent back to the Rent Control and Eviction Officer to restore the case at its original number and to decide it afresh as per observations made in the body of this judgment and in accordance with law. There will be no order as to costs.

(Petition allowed)