
(1979) 07 AHC CK 0075

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2195 of 1077

Kashi Prasad Misra

APPELLANT

Vs

The Rent Control and Eviction Officer and Others

RESPONDENT

Date of Decision : 11-07-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 12(3A), 21

Citation : (1979) AWC 599

Hon'ble Judges : K.N. Singh, J;B.D. Agarwal, J

Bench : Division Bench

Advocate : A. Kumar, for the Appellant;

Final Decision : Allowed

Judgement

K.N. Singh and B.D. Agarwal, JJ.—The Petitioner Kashi Prasad Mishra is the tenant in a portion of house No. 4, Lowther Road, Allahabad. Respondent Nos. 3 and 4 are co-owners and landlords of this premises. The accommodation was allotted in favour of the Petitioner by an allotment order dated 18th March, 1970. The landlords challenged this allotment order before the Rent Control and Eviction Officer and then before the State Government but this challenge failed. At the relevant time when the allotment order was passed the Petitioner was working as a lecturer in Government Inter College, Allahabad. In July, 1970 the Petitioner was transferred as an Asstt. Inspector of Sanskrit Pathshalas, Nainital Region, Nainital. Later in August, 1971 he was again transferred from Nainital to Bareilly in the same capacity and again in July, 1973 he was transferred to Gorakhpur. In December, 1974 he was transferred to Faizabad in the same capacity. It would thus be seen that the Petitioner was being transferred from place to place during all these years. The Petitioner accordingly decided that he would make his permanent resident at Allahabad and the Petitioner along with his family continued to live permanently in the accommodation in dispute.

2. In the year 1972 one Sri Harish Chandra Srivastava filed an application for allotment of the accommodation in dispute. This application was filed on the basis that a vacancy in law had occurred on account of Petitioner's transfer to Bareilly. An allotment order was passed in favour of Sri Harish Chandra Srivastava. Coming to know of this the Petitioner filed an appeal before the District Judge, Allahabad. This appeal was allowed and it was held that there was no vacancy and accordingly the allotment order was set aside. This appellate order became final.

3. Thereafter in January, 1974 an application u/s 21 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972) (hereinafter referred to as the Act) was filed by the landlords. This release application was finally dismissed by the appellate authority on the 7th of April, 1977. A review application was filed against this order which was also dismissed.

4. Later on one Sri Uttam Deo Dixit filed an application for allotment in respect of the accommodation in dispute on the basis that there was deemed vacancy under the provisions of Section 12(3-A) of the Act. The Petitioner filed objections. Apart from other objections the Petitioner also objected on the ground that Section 12(3-A) of the Act was not attracted to the circumstances of the present case and as such there was no deemed vacancy. It was inter alia, pressed by the Petitioner that he was not transferred from Allahabad, after coming into force of U.P. Act No. 28 of 1976 by which Sub-section (3-A) was inserted in Section 12 of the Act. It may be mentioned herein that U.P. Act No. 28 of 1976 came into force from 5th of July, 1976.

5. The Rent Control and Eviction Officer after calling for a report from the Rent Control Inspector, ultimately by an order dated 9th of September, 1977 notified the vacancy of the accommodation in question. This order notifying the vacancy does not give any reasons. Thereupon the Petitioner filed the present writ petition under Article 226 of the Constitution praying for writ of certiorari quashing the order dated 9th of September, 1977 passed by Rent Control and Eviction Officer notifying the vacancy. Further, it has also been prayed that a writ of mandamus may be issued directing the Respondents not to proceed in any manner on the basis of the impugned order dated 9th of September, 1977 for the allotment of the accommodation in dispute in favour of any one and not to interfere with the Petitioners' possession of the accommodation in dispute on the basis of this impugned order.

6. No counter affidavit has been filed by the Respondents. The factual averments made in the writ petition thus stand uncontroverted.

7. It has been contended by Sri A. Kumar, Learned Counsel for the Petitioner that the Petitioner not having been transferred from Allahabad, after coming into force of U.P. Act No. 28 of 1976, the provisions of Section 12(3-A) of the Act should not be applicable and accordingly no deemed vacancy would occur in law. It has been stated in the petition that the Petitioner was posted at Faizabad when

U.P. Act No. 28 of 1976 came into force and the Petitioner continued at Faizabad and has not been transferred thereafter. Me has placed reliance upon the decision of a Division Bench of this Court in *Madhuri Asthma v. S.A. Khan* 1979 UP RCC 269. It has been laid down in that case that Section 12(3-A) of the Act makes it clear that a tenant of residential building will cease to occupy the same on transfer if the transfer has taken place after coming into force of U.P. Act No. 28 of 1976 i.e. 5th of July, 1976. The operation of this provision was held not to be retrospective and since in that case the transfer was made before coming into force of this provision it was held that no deemed vacancy occurred u/s 12(3-A) of the Act.

8. Clearly the aforesaid decision directly helps the Petitioner and is applicable to the facts of the present case. Accordingly no deemed vacancy could be said to have occurred as a result of Section 12(3-A) of the Act and consequently no proceedings for allotment of the accommodation can be taken. The Petitioner is accordingly entitled to the relief prayed for.

9. The Learned Counsel for the Petitioner further contended that upon the Petitioners' transfer he was not allotted any accommodation under the Act nor any official accommodation was provided by the State Government, at the place to which he was transferred and, therefore, the Petitioner cannot be deemed to have ceased to occupy the accommodation in question. This submission, according to Learned Counsel finds support from the language of Section 12(3-A) of the Act. In *Deep Chand Pant v. III Addl. District Judge* 1978 UP RCC 200, Justice Satish Chandra (as he then was) took the view that the allotment of residential accommodation is not a condition precedent to the applicability of Sub-section (3-A). The order of transfer itself brings into operation Section 12(3-A) and it operates from the 30th day of June, following the date of such transfer. The learned Judge further observed that the alternative, namely, allotment of any residential accommodation is in addition to the order of transfer. The transferred employee gets further benefit in case residential accommodation is allotted subsequent to 30th June, following the date of the transfer order. We need not go any further into this question, as upon the view taken by us on the first point referred to above the writ petition is liable to be allowed.

10. For the reasons mentioned above we allow the writ petition and quash the order of Rent Control and Eviction Officer dated 9th of September, 1977 notifying the vacancy. The Respondents are also directed not to proceed in any manner, on the basis of the order of the Rent Control and Eviction, Officer dated 9th of September, 1977, for the allotment of the accommodation in question. Since no counter affidavit has been filed we make no order as to costs.