
(1988) 07 AHC CK 0053

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3578 of 1987

Kedar Nath Gupta

APPELLANT

Vs

The Rent Control and Eviction Officer and Others

RESPONDENT

Date of Decision : 12-07-1988

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 12(1), 21
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 8

Citation : (1988) 2 AWC 1036

Hon'ble Judges : Ravi S. Dhavan, J

Bench : Single Bench

Advocate : K.N. Tripathi and V.C. Tripathi, for the Appellant;

Final Decision : Allowed

Judgement

Ravi S. Dhavan, J.—The issue in the present writ petition is whether in reference to certain premises vacancy within the meaning of U.P. Act No. XIII of 1972 has been correctly declared.

2. The premises is at IS Vivekanand Marg, Allahabad, occupied by the Petitioner, Kedar Nath Gupta, as tenant. The Respondents No. 2, 3 and 4 Messrs Suresh Kumar Gupta, Ashok Kumar Gupta and Vijai Kumar Gupta, are sons of the Petitioner's brother. The said Respondents No. 3 and 4, aforesaid, claim to be the landlord, but on this it is the contention of the Petitioner that it is their father who is the landlord and not they. However, this aspect is not relevant for deciding the issues raised in the present petition. The Respondent No. 2 moved an application dated 28 April, 1984 seeking allotment of the aforesaid premises before the Rent Control and Eviction Officer, Allahabad, on the ground that the premises were in fact vacant as the Petitioner has ceased to occupy the shop. It was contended in the application that the Petitioner has ceased business from the premises in question. On the application of the Respondent No. 2, an

inspection of the premises was caused by an Inspector from the office of the Rent Control and Eviction Officer for determining whether there was a vacancy in the premises as a prelude to allotment proceedings. This inspection was within the meaning of Rule 8 of the Act, aforesaid, in effect an inspection for ascertainment of a vacancy. Thus, between the contesting Respondent and the office of the Rent Control and Eviction Officer the investigation was for the purposes of ascertaining whether there is a vacancy within the meaning of Section 12 of the Act.

3. More than one inspection was occasioned of the premises in question. For the purposes of the present writ petition it would be best to see the report in pursuance of the inspection as noticed by the Rent Control and Eviction Officer, Allahabad, in the order dated 6 February, 1987, annexure "10" to the writ petition. This order is sought to be impugned.

4. A perusal of this order reveals that the inspection of the premises brought on record that all the goods of the Petitioner were lying in the premises in question and in fact had not been removed. This, it was not a case u/s 12(1)(a) of the Act, aforesaid. It is accepted at the Bar that it is also not a case under Sub-clause (b) of the aforesaid section and that Sub-clause (c) in any case, does not apply as the premises are not residential premises.

5. The inspection report reveals that all the effects and goods continued to be housed in the premises in question. The argument of the Respondent before the Rent Control and Eviction Officer was that the Petitioner has ceased business and evidence was being placed before the Rent Control and Eviction Officer that the Petitioner does not carry on his business and does not need the shop. The Rent Control and Eviction Officer took note of this argument and, in effect, declared vacancy within the meaning of Section 12(1)(a) of the Act. The other two sub-clauses in the section do not apply.

6. The matter before the Rent Control and Eviction Officer was not one on which he could proceed. Examining the issues to the effect that the Petitioner had ceased business is not the jurisdiction of the Rent Control and Eviction Officer u/s 12 of the Act, as this would be an inquiry into the bona fide need of a landlord or the tenant. This aspect of the matter can only be examined u/s 21 of the Act. The fact that the Petitioner has ceased business from the premises in question in the face of circumstances that his effects and goods were laying in the shop is not a ground upon which the Rent Control and Eviction Officer can confer upon him a jurisdiction for declaring a vacancy, in reference to the context. The landlord cannot short circuit recourse to proceedings u/s 21 of the Act as the plea that a tenant has ceased his business from a particular premises, when his effects continue to occupy the premises in question, is a plea to be taken by the landlord u/s 21 of the Act, and likewise may be resisted by the tenant.

7. The Rent Control and Eviction Officer in the impugned order dated 6 February, 1987 committed a manifest error in assuming jurisdiction in a matter u/s 21 in

carving out a bonafide need for the landlord when all that he was required to do was to return a finding from the record before him, whether the Petitioner had substantially removed his effects. The record before him, beyond a reasonable doubt even upon presentation of the evidence of the Respondents revealed that the goods of the Petitioner continued to occupy the premises in question and thus, it was not a factor under Sub-clause (a) of Section 12(1) of the Act upon which vacancy could be declared.

8. Thus, the order dated 6 February, 1987 needs to be quashed as the Rent Control and Eviction Officer committed a manifest error in declaring a vacancy when the record otherwise bore out that the premises continued to be occupied.

9. The petition is, thus, allowed with costs.