
(2016) 08 AHC CK 0044
In the Allahabad High Court
Case No : Writ A No. 35861 of 2016

Kripa Shankar Gupta

APPELLANT

Vs

Adarsh Kumar Agrawal

RESPONDENT

Date of Decision : 11-08-2016

Acts Referred:

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

Citation : (2016) 118 ALR 299 : (2016) 3 ARC 154

Hon'ble Judges : Pankaj Mithal, J.

Bench : Single Bench

Advocate : Saurabh Srivastava, Advocate, for the Appellant; Abu Bakht,
Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.— Heard Sri. Saurabh Srivastava, learned counsel for the petitioner and Sri. P.K. Jain, Senior Counsel assisted by Sri. Abu Bakht appearing for the respondents.

2. Go-down No.76 situate in premises No.361 Harris Ganj, Cantt., Kanpur Nagar is the subject matter of dispute.

3. The petitioner is occupying the said go-down and the respondents are the owners and landlords of it.

4. On the application of the respondent-landlords for release of the said go-down proceedings for declaring it vacant and consequently for its release were started by the Rent Control and Eviction Officer. The vacancy was declared on 27.7.2009 and the go-down was ordered to be released in favour of the respondent-landlords vide order dated 21.4.2011. Both these orders were assailed by the petitioner in revision under Section 18 of the U.P. Act No.13 of 1972 (hereinafter

referred to as the "Act") but the said revision failed on 11.5.2016.

5. The petitioner aggrieved by the above orders has preferred this petition under Article 226 of the Constitution challenging the order of vacancy dated 27.7.2009, the order of release dated 21.4.2011 and the order of revisional court dated 11.5.2016.

6. In challenging the order of vacancy the preliminary submission of Sri. Saurabh Srivastava, learned counsel for the petitioner is that the petitioner was not given any notice before the go-down was inspected by the Rent Control Inspector. Therefore, declaration of vacancy on the basis of an ex-parte report of Rent Control Inspector is illegal. Secondly, the order of vacancy is an ex-parte order. The petitioner was prevented by sufficient cause from appearing before the Rent Control and Eviction Officer during the hearing of the matter regarding vacancy. Lastly, it is submitted that as the order of vacancy is not tenable in law the go-down could not have been released.

7. The order of vacancy reveals that the Rent Control and Eviction Officer has declared the vacancy as he has found the petitioner to be an unauthorized occupant as he was occupying the same without any order of allotment. The petitioner was not entitled to regularisation of the tenancy under Section 14 of the Act as the said provision was not applicable to the building situated within the cantonment area.

8. There is nothing on record to establish that the petitioner is the lawful tenant or that he occupied the go-down under any allotment order.

9. The Rent Control Inspector had submitted his report on 31.12.2007 after inspecting the go-down and reported that it is being occupied by the petitioner without any order of allotment. The petitioner is occupying it unauthorisedly and as such it is liable to be declared vacant. The report further states that a notice before visiting the go-down was given to the petitioner to ensure compliance of Rule 8(2) of Rules framed under the Act and it was reported to have been served upon him. The service of the notice is also established by the original notice on record.

10. The argument that the order of vacancy stands vitiated on account of failure to serve notice before inspection which was made in his absence would not be very material for the reason that before the vacancy was declared the petitioner had not only put in appearance but had filed evidence in the form of affidavit. It was on consideration of the said evidence that the vacancy order was passed.

11. No doubt that the Rent Control and Eviction Officer or the Rent Control Inspector is obliged to inspect the premises for the purposes of declaration of vacancy/allotment as far as possible in the presence of the occupant in view of Rule 8(2) of the Rules but there are authorities to the effect that the order of vacancy would not be vitiated on account of non-service of notice under Rule 8(2) of the Rules framed under the Act once the occupant had participated in

vacancy proceedings.

12. A Division Bench of this Court in *Geep Industrial Syndicate Ltd., Allahabad v. The Rent Control and Eviction Officer, Allahabad and others* 1982 ARC 585 has observed that "the rules of natural justice and the duty to be fair must not be allowed to discredit themselves by making unreasonable requirements and imposing undue burdens". Their Lordships dealing with an identical controversy where the inspection of the premises was made without notice to the occupant in his absence held that as before any damage could be done the occupant had appeared and participated in the proceedings, therefore there is no question of holding the order of vacancy to be invalid on the ground that the inspection was made in his absence and without notice.

13. In *Rejendra Singh and others v. District Judge, Kanpur and others* 1986 (1) ARC 116 it has been held that non-compliance of Rule 8 of the Rules framed under the Act would not have any effect on the order declaring vacancy when the tenant had participated in the proceedings for vacancy/allotment and had opportunity to file objection.

14. A similar view was taken by another Bench of this Court in the case of *Lachhman Prasad Richaria v. IV Additional District Judge, Hamirpur and others* 1990 (1) ARC 497. Learned Single Judge in the aforesaid decision clarifying the object behind Rule 8 of the Rules framed under the Act held that mere fact that the notice under the aforesaid Rule was not sent would not vitiate the proceedings if landlord had participated in the proceedings for declaration of vacancy/allotment inasmuch it would not result in causing any prejudice to him.

15. In view of the aforesaid decisions, the opinion expressed in *Om Shanker Sharma v. VIth Additional District and Sessions Judge, Kanpur Nagar and others* 2009 (1) ARC 839 is of little significance. The aforesaid authority lays down that a duty has been cast upon Rent Control and Eviction Officer to serve a notice upon landlord before inspection is made under Rule 8 of the Rules framed under the Act. There may not be any second opinion on the above aspect of the matter but the aforesaid authority falls short in considering as to what would happen if the party concerned appears before the Rent Control and Eviction officer and participates in proceedings of the vacancy/allotment/release by adducing evidence and even then an order of vacancy is passed. The above aspect of the matter has been taken into account by the aforesaid three decision of the *Geep Industrial Syndicate Ltd. (supra)*, *Rejendra Singh (Supra)* and *Lachhman Prasad Richaria (supra)*. Thus, the aforesaid decision is of no value in the instant case.

16. In view of the aforesaid decisions and the legal position spelled out therein, non compliance of Rule 8 of the Rules framed under Act would not vitiate the proceedings for declaration of vacancy if occupant had opportunity to participate in the proceedings and to file affidavits etc.

17. In the instant case it is admitted on record that after the report was submitted by the Rent Control Inspector the petitioner had appeared in the

proceedings and had filed his affidavit also. However, he failed to take any objection against the report of the Rent Control Inspector. Thus, in such a situation it cannot be said that any prejudice was caused to him on account of non-service of the notice about the inspection though in fact the report of the Rent Control Inspector reveals that a notice was actually issued and served upon him.

18. In view of the above, the first submission of the learned counsel for the petitioner has no merit and fails.

19. The other aspect of the matter is whether the order of vacancy is an ex-parte order and is liable to be recalled.

20. In this connection it is to be noted that after the notice of the proceedings was taken to have been served by publication, the Rent Control and Eviction Officer had passed an order to proceed ex-parte against the petitioner. The petitioner had applied for recall of the said order but the application was rejected.

21. The petitioner having put in appearance in the proceedings even filed an affidavit but later on failed to turn up for the reason which the learned counsel for the petitioner submits were beyond his control as his son had fallen seriously ill and was hospitalized. The reasons that prevented the petitioner from appearing in the proceedings at the time of hearing were not found to be sufficient to recall the order of vacancy as the application to that effect filed by the petitioner was rejected by a separate order dated 18.4.2011. The said order attained finality as it was not challenged any further not even in this petition.

22. Thus, in view of the aforesaid facts and circumstances none of the two grounds have any force in law which may compel me to interfere with the order of vacancy in exercise of extra ordinary jurisdiction under Article 226 of the Constitution.

23. Once the order of vacancy exists, it is settled law that unauthorized occupant has no right to contest or oppose the application for release. In such a situation, the order of release also does not require any interference by this Court.

24. Accordingly, I am of the opinion that the revisional court has not committed any jurisdictional error in dismissing the revision as meritless.

25. The writ petition as such lacks merit and is dismissed.