

(2012) 08 AHC CK 0110
In the Allahabad High Court
Case No : Writ A. No. 59713 of 2007

Krishna Gopal Mehrotra and Others

APPELLANT

Vs

Rent Control and Eviction Officer and Others

RESPONDENT

Date of Decision : 22-08-2012

Acts Referred:

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

Citation : (2012) 08 AHC CK 0110

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Writ petition is directed against the order passed by Rent Control and Eviction Officer, Kanpur Nagar (hereinafter referred to as "RCEO") under Section 12 (1) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") declaring vacancy in shop in question.

2. Petitioners admittedly claim that they do not occupy the said premises as tenant. On the contrary their claim is that they are occupying premises in the capacity of owner thereof. It is also not disputed that aforesaid shop was under the tenancy of one Talvar Studio with which petitioners have nothing to do and it was vacated by the said tenant. The time when it was vacated by erstwhile tenant i. e. Talvar Studio is in dispute. The petitioners claimed that Talvar Studio vacated the shop in 1970 handing over its possession to petitioner's father and after his death it was succeeded by the petitioner in 1986. The Court below (RCEO) has recorded finding otherwise that Talvar Studio vacated the shop in 1986. This is based on the evidence that in the house tax assessment, years 197887, the said shop has been shown in the tenancy of Talvar Studio. It is thus evident that accommodation in question was under tenancy of M/s Talvar Studio. It was vacated after enforcement of Act, 1972 and no allotment has been made in favour of anyone by RCEO since information of such vacation was never conveyed to him. Admittedly till the application was filed by respondent no. 4 in

2006 for declaration of vacancy in shop in question and for allotment. There was no occasion for RECO to have the information about vacancy. It is also admitted that shop in question has never been released in favour of any of its owner, whosoever, whether the petitioners or the respondents no. 2 & 3. This question has importance for the reason that admittedly the shop having not been released in favour of any of landlord, would be available for allotment after its vacation by erstwhile tenant M/s Talvar Studio.

3. The only ground raised by petitioners is that having come into possession in 1986 they cannot be asked to vacate the premises after almost 20 years and the proceedings initiated by RCEO resulting in the impugned order are barred by limitation. In reference thereto, reliance is placed on certain authorities of this Court namely Abdul Khaliq Vs. A. D. J. 2007 (2) ARC 629, Mansaram Vs. S. P. Pathak and Ors. 1984 (1) ARC 17 and Anil Kumar Dixit Vs. Smt. Maya Tripathi 2006 (1) ARC 377.

4. All the above authorities have been considered recently by this Court in Civil Misc. Writ Petition No. 33751 of 1999 (Smt. Uma Yadav Vs. A. D. M. (Supply)/R. C. E. O. Varanasi & Others) decided on 16. 7. 2012 (Reported in 2012 (3) ARC 141 and it has been held that for the purpose of attracting the provisions relating to delay/limitation, if any, it is the date when cause of action has arisen. In respect to RECO or prospective allottee, obviously such period would commence only from the date of knowledge of vacancy to them and not otherwise. It has not been shown by petitioner anywhere that either respondent no. 1 or respondent no. 4 were having knowledge of the aforesaid vacancy, either in 1986 or immediately thereafter or at any point of time before the application was filed by respondent no. 4 in 2006. Thus it cannot be said that impugned order is vitiated on account of any alleged period of limitation/laches or delay. No miscarriage of justice or mistake of law, thus, could be pointed out in the order impugned in this writ petition, warranting interference.

5. Dismissed.