
(1999) 12 AHC CK 0049
In the Allahabad High Court
Case No : C.M.W.P. No. 16592 of 1994

Kumari Asha Raina

APPELLANT

Vs

Rent Control and Eviction Officer, Dehradun and another

RESPONDENT

Date of Decision : 03-12-1999

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12(1), 16

Citation : (2000) 1 AWC 462

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Rajesh Tandon, for the Appellant;

Final Decision : Allowed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 16.2.1994 passed by the Rent Control and Eviction Officer declaring the vacancy of the premises in question.

2. The petitioner is admittedly landlady of the premises in question. An application for allotment of the premises was filed on the ground that the landlady is not occupying the premises. The Rent Control and Eviction Officer directed the Rent Control Inspector to submit his report. The Rent Control Inspector submitted his report on 1.6.1992 stating that at the time of Inspection, he found that the house was closed and one Smt. Somti was living in out houses of the building. In the building, there were six rooms, one hall, one verandah, etc. and one room on first floor. She informed that Major Nirmal alias Niminu had vacated the accommodation and gave its possession to Smt. Asha Raina. the owner of the house who was not found on the spot but it was reported that she was residing at Sri A. N. Kaul Dilaram Baradari Chaupatiya, Lucknow and the notice may be given to her.

3. The petitioner having come to know of the proceedings filed an objection

before the Rent Control and Eviction Officer alleging that the Rent Control Inspector made the inspection of the house in question in her absence without any prior notice. The previous owners of the house in question were Smt. Kaushliya Devi and Major Raman. They have sold the property to the petitioner's mother. The name of Major Nirmal alias Nimmu had been wrongly stated in the report of the Inspector instead of showing his name Major Raman Bahadur. The Rent Control and Eviction Officer relying upon the report of the Rent Control Inspector dated 21.6.1992 declared the accommodation in question as vacant by his order dated 16.2.1994 and thereafter allotted the same to respondent No. 2 on 21.2.1994.

4. The Rent Control and Eviction Officer declared the vacancy only on the basis of the report of the Rent Control Inspector dated 1.6.1992. The Rent Control Inspector had never given any notice to the petitioner, though according to him the petitioner was residing at Lucknow. He indicated that the notice may be sent to the petitioner. The Rent Control Inspector should have first given the notice to the petitioner and only thereafter should have inspected the premises. Rule 8 (2) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules. 1972 (in short the Rules) provides that the inspection of the building, so far possible shall be made in the presence of the landlord and the tenant or any other occupant. The Inspection without notice to the petitioner was invalid and on the basis of the said report, the vacancy could not have been declared.

5. Even taking into consideration the report of the Inspector, it cannot be held that there was vacancy when Smt. Somti was found in occupation in the out house of the disputed house. The main house was found locked and in possession of the landlady. He was told by Smt. Somti that one Major Nirmal alias Nimmu after vacating the house had given possession to the petitioner. The Rent Control Inspector did not submit any report that the said Major Nirmal alias Nimmu was the tenant of the premises in question. The petitioner had filed an objection clearly stating that Major Nirmal alias Nimmu was never tenant of the disputed house. In fact, previous owners were Smt. Kaushilya and Major Raman Bahadur from whom her mother had purchased the property. The name shown as Major Nirmal was Incorrect. The Rent Control and Eviction Officer did not record any finding as to whether Major Nirmal alias Nimmu was tenant of the petitioner and he had vacated the accommodation after delivery of its possession to the petitioner.

6. The deemed vacancy occurs u/s 12 (1) (a) and (b) of the Act when the landlord or tenant has substantially removed his effects from the building or has allowed It to be occupied by any person who is not a member of his family. The Rent Control Inspector found that the house was locked and it was in the possession of the petitioner. It could not have been treated as vacant unless it was found that it was occupied by the tenant and he had vacated. Major Nirmal alias Nimmu was not found to have vacated the disputed accommodation as tenant, it could not have been declared as vacant. On the other hand, it was

stated that Major Raman Bahadur had sold the property and his name was wrongly mentioned in the report as Major Nirmal alias Nimmu.

7. In view of the above, the writ petition is allowed. The order declaring the vacancy dated 16.2.1994 and subsequent allotment order passed in favour of respondent No. 2 are hereby quashed.

8. The parties shall bear their own costs.