
(1976) 09 AHC CK 0053
In the Allahabad High Court
Case No : Civil Misc. Writ No. 71 of 1976

Lakshmi Shanker Misra

APPELLANT

Vs

I Addl. District Judge and Others

RESPONDENT

Date of Decision : 07-09-1976

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 25(1), 25(2), 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 8, 9

Citation : (1976) AWC 761 : (1976) AWC 727

Hon'ble Judges : N.D. Ojha, J

Bench : Single Bench

Advocate : R.S. Dubey, for the Appellant; R.P. Tripathi and S.C., for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, J.—It appears that a portion of house No. 90, Atarsuiya, Allahabad, fell vacant and an application was made by the Petitioner for allotment in his favour. It further appears that the Petitioner represented that Vishwanath Prasad Respondent No. 4 was the landlord of the accommodation. An order of allotment was passed on 1st March, 1975, in favour of the Petitioner presumably in consultation with Vishwanath Prasad Respondent No. 4. Two days later, viz., on 3rd March, 1975, an application was made by Respondent No. 3 Smt. Amrawati Devi for review of the order of allotment on the ground that she was the landlord of the accommodation in question and the order of allotment was obtained by suppressing correct facts. As is apparent from the order of the Prescribed Authority, Vishwanath Prasad Respondent No. 4 neither filed any objection nor any affidavit nor was any argument addressed on his behalf. On the material on record, the Prescribed Authority came to the conclusion that Vishwanath Prasad Respondent No. 4 was the owner of house No. 90 but he had transferred the same to Respondent No. 3 by a registered sale deed in April, 1972, and that

thereafter Respondent No. 3 was the owner of the said house. The application of Respondent No. 3 was yet rejected on the ground that it appeared that Respondent No. 4 was realising rent on behalf of Respondent No. 3 from the tenants of house No. 90 even after the execution, of the sale deed aforesaid and in view of the definition of the term "landlord" contained in the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act it was he who was the landlord. An appeal was filed by Respondent No. 3. The Additional District Judge agreed with the Prescribed Authority that in view of the sale-deed, referred to above, it was Respondent No. 3 who was the owner of the property. He, however, came to the conclusion that the right to recover rent did not vest in Respondent No. 4 and it vested only in Respondent No. 3. It was she to whom notices as contemplated by rules 8 and 9 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, should have been issued before passing any order of allotment in favour of the Petitioner. On this finding the Additional District Judge set aside the order of the Prescribed Authority as also the order of allotment dated 1st of March, 1975, passed in favour of the Petitioner. The case was sent back to the Prescribed Authority for proceeding in accordance with law. It is this order of the Additional District Judge which is sought to be quashed in the present writ petition.

2. It was urged by counsel for the Petitioner that on the finding recorded by the Prescribed Authority that Vishwanath Prasad Respondent No. 4 was realising rent from the tenant of house No. 90 even after the sale deed in favour of Respondent No. 3 had been executed by him, it was Respondent No. 4 who would be the landlord and not Respondent No. 3, in view of the definition of the said term as contained in the Act.

3. Having heard counsel for the parties I am of opinion that there is no substance in this submission. "Landlord" as defined in Section 3(j) of the Act in relation to a building, means a person to whom its rent is or if the building, were let would be, payable and includes, except in Clause (g) the agent or attorney, of such person. In cases where there is a privity of contract between two persons in pursuance of which rent is payable by one person to the other in respect of a building occupied by him in the capacity of a tenant, the person to whom rent is payable, in view of the agreement would be the landlord of the person by whom the rent would be payable irrespective of the fact as to who was the actual owner of the property. It would be a case covered by the first part of the definition viz., the landlord would be such person to whom the rent of the building is payable. The position in law would, however, be different if an accommodation falls vacant and the question arises as to who is the landlord to whom notices as contemplated by rules 8 and 9 of the rules aforesaid are to be given before passing an order of allotment. At this stage the second part of the definition would be attracted, viz., the landlord would be the person to whom rent, if the building were let, would be payable. It may be emphasised that in either event landlord would be such person to whom rent is or would be payable as the case may be and not the person by whom rent is physically collected on behalf of the landlord for

otherwise the servant or the messenger of the landlord would himself become the landlord. Who would be the person to whom rent, if the building were let, would be payable is the crucial question it would be the person authorised to let out the building and to recover rent from the tenants. Normally such person would be the owner of the building. However, if the owner has entered into a contract with some other person authorising him to let out the vacant building and to recover rent from the tenants either as his agent or attorney it may be that person who could be called landlord within the definition of the said term under the Act. Similar may be the case when for the time being either by an order of court or by operation of some law the right to let out the building and recover rent from the tenants vests in some person other than the owner. No material on the record has been brought to my notice which may indicate that Respondent No. 4 falls in any one of these categories. In this view of the matter, it was Respondent No. 3 alone who could be treated as the landlord of the accommodation in question and to whom notices under Rules 8 and 9 aforesaid should have been issued before passing any order of allotment in favour of the Petitioner. Since this was admittedly not done, the Additional District Judge was right in setting aside the order of allotment passed by the Prescribed Authority.

4. It was then urged by counsel for the Petitioner that at the time when the sale-deed was executed by Respondent No. 4 in favour of Respondent No. 3 a rent deed had also been executed by Respondent No. 4 in favour of Respondent No. 3 as was apparent from the affidavit filed by Prem Chand Gupta son of Respondent No. 3 before the Prescribed Authority. According to counsel, since the Respondent No. 4 was the tenant of the accommodation he was entitled to sub-let it and, for that purpose would be deemed to be the landlord vis-à-vis the sub-tenant. Firstly, this plea was not raised either before the Prescribed Authority or before the Additional District Judge. Even in the writ petition, there is no such assertion nor has any ground to that effect been taken. Consequently, the Petitioner is not entitled for the first time during the course of arguments to raise this plea. Further, there is nothing on the record to indicate that Respondent No. 3 had given any permission in writing to Respondent No. 4 to sub-let any portion of the accommodation. Indeed, as seen above, there is even no pleading to that effect. Section 25(1) of the Act is to the effect that no tenant shall sub-let the whole of the building under his tenancy. Sub-section (2) provides that the tenant may with the permission in writing of the landlord and of the District Magistrate, sub-let a part of the building. In the absence of a permission in writing by Respondent No. 3 it was not open to Respondent No. 4 to sub-let any part of the building, even if it is accepted that he was continuing as a tenant on the date on which the order of allotment had been passed in favour of the Petitioner. In this view of the matter, there is no substance in this submission either.

5. No other point has been pressed.

6. In the result, the writ petition fails and is dismissed with costs.